

Abbeville v. the State of South Carolina: A Case Study

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ABSTRACT

Abbeville v. the State of South Carolina (2005) is the latest lawsuit in a long line of cases addressing school finance issues that originated with *Brown v. the Board of Education* (1954), *Serrano v. Priest* (1971), and *the San Antonio Independent School District v. Rodriguez* (1973). Unlike many of the other school finance cases that have been adjudicated, *Abbeville* has not been the subject of much academic scrutiny. This case study documented *Abbeville's* origins in an effort to begin the process of academic examination and understanding. To document the inception of this case, five research questions were developed to guide the efforts. These five research questions were: 1) What political and economic conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit?; 2) How were the eight lead school districts selected to be a part of the plaintiffs' case?; 3) What legal arguments did both the plaintiffs and defendants use in *Abbeville*?; 4) Why did the state choose to contest the lawsuit?; and 5) What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the case react to the decision? The data used to answer these research questions included analysis of primary documents and eighteen qualitative interviews. The primary documents included the state constitution, current legislation in South Carolina affecting public education, previous school finance oriented court cases in South Carolina, and student achievement data. The eighteen participants in this study all shared a high degree of familiarity with *Abbeville*. Eleven were directly involved in the case (testified, heard and/or made legal arguments), four were deposed, and the

remaining three followed the case closely. The credibility of this study increased through the use of triangulation, or the use of multiple data sources related to an issue of uncertainty, which produced the conclusions to the study found at the end of this document. As a result of the data collected, conclusions related to *Abbeville* are presented along with a discussion on the implications of this study. There are also suggestions for future studies.

Dedication

This work is dedicated to Jen, Ellen, and Emerson. Without your support, sacrifice, and encouragement I would not have completed this dissertation. I love you.

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I wish to express my gratitude to a number of people who have supported me throughout this project. I will begin with my committee members. Dr. Glen Earthman not only proved an outstanding committee member for his thorough reviews of various drafts and his insightful suggestions, he challenged me to be the best student I am capable of being. He pushed me when I was not pushing myself. That, in my opinion, is the ultimate compliment one can pay a teacher.

I actually looked forward to my conversations, and debates, with Dr. David Alexander. I knew that I would be required to articulate a position and defend it. While others were focused on specifics, Dr. Alexander always provided a global perspective related to this study. I am in awe of his knowledge of school law, his analytical abilities, and I aspire to have a similar degree of expertise in my area of interest.

I would not have completed this study if it had not been for Dr. Lisa Driscoll. She provided me with a vision and set demanding goals that I had to meet throughout the entire process. From the need for a detailed outline to the blunt assessments of my work I quickly realized how difficult, and rewarding, it would be to complete this study. Dr. Driscoll had an uncanny ability to balance her high expectations with a genuine interest in the individual and she would always take time to talk with me about a number of issues.

Dr. Richard Salmon proved an exemplar mentor and chair. He allowed me the opportunity to guide my own study and offered valuable suggestions if I took misguided paths. He certainly had a clear idea of how this study should look, but he allowed me to put my own touches on it. Ultimately, under his watchful eye I was able to grow from

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CHAPTER 1: INTRODUCTION

Introduction

Cubberley observed, “[o]ne of the most important administrative problems of today is how to properly finance the school system of a state, as the question of sufficient revenue lies back of almost every other problem.”¹ Such an observation encapsulates the importance of school finance succinctly. However, Cubberley’s comments were penned in 1905, over one hundred years ago. Ironically, Cubberley’s opinion is as accurate today as it was in 1905.

In 1954, the Supreme Court of the United States of America handed down the landmark decision in *Brown v. the Board of Education*, which resulted in the elimination of *de jure* segregation, the reclassification of education from a privilege to a right, and established the ideal of equal educational opportunity for all children.² Eventually, the efforts of ensuring equal educational opportunities for all children resulted in legal battles centering on ending *de facto* segregation.³ To address *de facto* segregation, reformers advocated for inter-district mixing of students to ensure greater racial balance in neighboring school districts. However, the *Milliken v. Bradley* (1974) case, which effectively rendered inter-district desegregation efforts unconstitutional, significantly limited desegregation efforts.⁴ Once these efforts were stymied, the push for equal educational opportunities for all students turned to financing practices within states.⁵

The rationale for revising states’ funding efforts centered on the belief that increased funds for less affluent school districts will directly result in many benefits for the students of these schools, including, but not limited to, safer facilities, increase and upgrade in resources (textbooks, computers, etc.), and greater retention of teachers and

support staff.⁶ Finance reformers argued these benefits would provide all students with virtually equal educational opportunities. Those resistant to implementing changes to the funding formula that relies on property taxes cite at least two studies that argue against a strong positive correlation between student achievement and increased resources.⁷

It is with this background in mind that this study attempts to document the factors around the *Abbeville v. the State of South Carolina* (2005) court case.⁸ Documentation and data will be collected in order to answer the following questions:

1. What political and economic conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit?
2. How were the eight lead school districts selected to be a part of the plaintiffs' case?
3. What legal arguments did both the plaintiffs and defendants use in *Abbeville*?
4. Why did the state choose to contest the lawsuit? And,
5. What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the case react to the decision?

The *Abbeville* case will be discussed in detail in this chapter. The discussion will include the original 1996 ruling, the South Carolina Supreme Court 1999 ruling, and the current ruling, which was handed down in 2005. Finally, this chapter will describe the study's purpose, need, limitations and structure.

The *Abbeville* Case

Forty-five of 50 states in America have had their funding formulas challenged in either a federal or state court.⁹ Each case is unique as a result of its locale, the legal arguments employed, and the ruling of the presiding court.¹⁰ As a result of this

uniqueness, each case in the area of school finance requires close academic examination in an effort to better understand what transpired in the case and, eventually, its possible affect on the state where the suit took place, as well as the field of school finance litigation. A detailed explanation of *Abbeville* will be presented in this section to begin the process of documenting what took place in this case.

Abbeville: The Beginnings

The *Abbeville* case began in 1993, when 40 of the poorer school districts in South Carolina, in conjunction with students and their taxpaying parents, sought a declaratory judgment against the state's funding formula for public education.¹¹ Interestingly, the 40 school districts represented nearly 50% of the total number of school districts in the state.¹² The plaintiffs contended that the state's funding formula violated: 1) the equal protection clause of both the state and the federal government, 2) the education clause of the South Carolina Constitution, and 3) the Education Finance Act of 1977 (EFA).¹³ Each of these complaints is discussed below.

Specifically, the plaintiffs' complaints against South Carolina's funding formula were broken up into four contentions. The plaintiffs argued that the funding formula, established by the EFA of 1977,

“(1) was under funded, lacking uniformity and imposed unlawful tax burden on Plaintiffs; (2) was not serving the purposes for which it was enacted; (3) had resulted in a disparity in the educational opportunities for students throughout the State; and (4) was not being funded at the level mandated by the EFA.”¹⁴

The plaintiffs sought a declaratory judgment that would render the implementation of the EFA unconstitutional and require the state to increase its contribution to the price tag of public education.

The equal protection clause of South Carolina's Constitution copies the federal equal protection clause verbatim. Both clauses read, "nor shall any person be denied the equal protection of the laws."¹⁵ However, in *San Antonio Independent School District v. Rodriguez* (1973),¹⁶ the United States Supreme Court ruled that the equal protection clause of the United States Constitution did not apply to education. The justification for this opinion rested on the fact that education, a concept never mentioned in the federal Constitution, was not a federally guaranteed fundamental right.¹⁷ Though the *Rodriguez* ruling appeared to end any notion of federal equal protection intervention in school finance litigation, the argument continues to be used well after that landmark decision.¹⁸

In *Abbeville*, the use of both the federal and state equal protection clauses followed a logical legal argument. The equal protection clauses guaranteed that laws would treat all people equally.¹⁹ South Carolina's Constitution required, by law, that the General Assembly fund public education.²⁰ The system implemented by the General Assembly relied on local property taxes for a portion of the local school district's revenues. The fact that property values fluctuate from one locale to another simply means the General Assembly has created a funding formula that fails to ensure equal protection, or funding in this situation, for all people under the law.²¹ One location, which has high property values, can tax its people at a lower rate and generate more funds for education than a location with low property values. The property poor school districts end up taxing their citizens at a higher rate only to generate, in some cases, significantly less

revenues.²² In the end, a funding system that favors one group of people over another for such a capricious reason as parents' income or geography is seen by many as a violation of the equal protection clause.²³

The second concern with South Carolina's funding formula centered on the state's education clause, which reads, "The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable."²⁴ Thro created four classifications for education clauses in state constitutions, based upon the expectations they placed on the state's legislative bodies regarding the quality of education.²⁵ Category I, the least demanding, requires states to "provide for a system of free public schools and nothing more."²⁶ Category II includes educational clauses that establish a minimal qualitative standard regarding the quality of public education.²⁷ Category III education clauses possess specific wording related to the purpose of education and requirements.²⁸ Category IV, the clauses with the strictest requirements, use specific language related to the quality of education a state is constitutionally required to maintain.²⁹ The higher the categorical rating an education clause receives, theoretically, the more susceptible the funding formula is to a legal challenge.

The plaintiffs in the *Abbeville* case argued that the state had failed to meet the criteria established in the state's education clause.³⁰ However, the wording of South Carolina's education clause establishes little, if any, qualitative standard for public education in the state. The plaintiffs were asking the courts to require the General Assembly to develop a more effective formula that not only supported "a system of free

public schools,” but also ensured equal “educational opportunities” for all students within South Carolina.³¹

The third problem with South Carolina’s funding formula for public education, according to the plaintiffs, centered on the EFA of 1977.³² Before the EFA was passed, South Carolina relied heavily upon the use of local property taxes to fund education with the state contribution coming from sales tax revenues.³³ The inequities with such a system became apparent to the General Assembly in the 1970s and steps were taken to improve the funding formula by reducing its reliance on property tax revenues.³⁴ The solution, the EFA of 1977, developed a system of distributing state funds that relied on a wealth-sensitive format, or an equalization funding formula.³⁵ The end result of this wealth-sensitive funding format is the poorer school districts in South Carolina receive more money from the state than their wealthier counterparts.

The purpose of the EFA of 1977 was ambitious, to say the least. The EFA sought to fund a minimal program of education for all children in South Carolina, allocate money to areas of need, ensure an equal local tax effort for education, guarantee each locality is genuinely attempting to fund education, and work to verify that state funds are spent effectively.³⁶ The plaintiffs in the *Abbeville* case contended that these components of the purposes of the EFA of 1977 were not being met in the early 1990s.

Abbeville: The 1996 Ruling

Between 1993, the year the suit originated, and 1995 the plaintiffs in the *Abbeville* case made three modifications to the original suit. First, the number of school districts represented was dropped from 40 to 36 due to school district consolidations and one school district choosing to not participate.³⁷ Second, the attorneys for the plaintiffs

selected eight school districts to represent the other school districts in the suit as the “trial plaintiffs”³⁸, or lead school districts. The eight school districts were as follows: Allendale County School District, Dillon County School District 2, Florence County School District 4, Hampton County School District 2, Jasper County School District, Lee County School District, Marion County School District 7, and Orange County School District 3. Finally, the plaintiffs filed a motion to focus the contentions of the suit on the EFA of 1977 legislation.³⁹ When first filed in 1993, the case was not focused on the failure of the state to live up to the ideals in the EFA of 1977 and the third motion honed the legal arguments on this code.

The defendants filed a motion in 1995 to dismiss the case.⁴⁰ The defendants argued that the plaintiffs failed to demonstrate sufficient justification for this suit to be considered. In the 1996 ruling, the Third Judicial Circuit Court acted on the motion by the defendants to dismiss the case based on the fact that a similar suit was brought before the state Supreme Court and the funding formula “passed the constitutional muster.”⁴¹

Abbeville: The 1999 Ruling

The decision by the Circuit Court to dismiss *Abbeville* was appealed to the South Carolina Supreme Court in 1996, though the court did not hear the case until 1997 and eventually handed down its ruling in 1999.⁴² The ruling, a 4 – 1 decision, affirmed a part of the circuit court’s decision and reversed another part.⁴³ The state Supreme Court remanded part of the case back to the circuit court because the higher court did not concur with the lower court’s interpretation of the state Constitution’s education clause.⁴⁴

The education clause within the South Carolina Constitution directs the general assembly to “provide for the maintenance and support of a system of free public schools

open to all children.”⁴⁵ The state Supreme Court interpreted the education clause as calling for a “minimally adequate education” for all students in South Carolina.⁴⁶

However, the Supreme Court, in interpreting the education clause, created a second term requiring a definition. The Supreme Court defined “minimally adequate” to mean the following:

“[w]e define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire:

- 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science,
- 2) a fundamental knowledge of economics, social, and political systems, and of history and governmental process; and
- 3) academic and vocational skills.”⁴⁷

It is interesting to note that the one dissenting justice in the state Supreme Court decision felt that the “minimally adequate”⁴⁸ interpretation and the 1999 *Abbeville* ruling “far exceeds the constraints of judicial construction.”⁴⁹ With this clarification and direction from the state Supreme Court, the lower court was required to hear the case.

Abbeville: The 2005 Ruling

The retrial at the Third Judicial Circuit Court lasted for 102 days between July 2003 and December 2004. During that time, 112 people offered testimony, either in person or by deposition, and over 4,400 documents were submitted as evidence.⁵⁰ In a thorough opinion, written by Thomas W. Cooper, Jr., the circuit court rendered a reconciliatory judgment that sided with both the plaintiffs and the defendants. The court

deemed the plaintiffs' facilities "safe and adequate" for instruction.⁵¹ The court found nothing wrong with the state's core curriculum or teacher licensure guidelines.⁵² Finally, the court found nothing wrong with the "inputs" into education, or the revenues allocated by the state for public education, except for the lack of funding by the state of an early childhood education program that would address the achievement gaps that result from poverty.⁵³ In the end, the state responded to the court's ruling by creating a pre-kindergarten pilot program for the plaintiffs' school districts to determine its effectiveness in ensuring students in these districts receive a "minimally adequate education."⁵⁴

Abbeville: Conclusion

The facts surrounding the *Abbeville* case tell a portion of the story. To a degree these facts explain what happened. However, with the summary of the facts surrounding *Abbeville* come more questions than answers. Greater research is required to better determine what happened in the case. The intention of this study was to collect the data necessary to answer the previous stated research questions.

Purpose of the Study

The amount of scholarly work related to school finance is extensive. However, the *Abbeville* case is new to the field and, as a result, requires greater examination and academic scrutiny. Quality scholarly works begin with a detailed examination of a phenomenon's inception. Such was the intended goal of this study. The purpose of this study was to document the processes leading up to and affecting the *Abbeville* case.

The processes leading up to and affecting *Abbeville* were divided into five questions. The first question related to the timing of the case. What economic and

political conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit? A thorough answer to this question required input from in-depth, qualitative interviews that identified the political and economic conditions in South Carolina and the nation at the time the case was filed. In addition to the in-depth, qualitative interviews, data sources used to document the reasons for the time of the case included examination of the legislation in South Carolina related to public education (K – 12) and analysis of data of school districts in South Carolina at the time the *Abbeville* case was filed. Each of these data sources will be described in detail in the methodology section (part of Chapter Two).

The second question centered on the selection process. How were the eight lead school districts selected to be a part of the plaintiffs' case? Did these 8 school districts present the best case for revising the funding formula used in South Carolina? Data from the in-depth, qualitative interviews coupled with an analysis of school districts in South Carolina were used to answer these questions.

The third question related to the legal arguments. What legal arguments did both the plaintiffs and defendants use in *Abbeville*? How did the legal arguments in *Abbeville* differ from the arguments used in three previous court cases in South Carolina that addressed school finance issues?⁵⁵ The data sources used to answer these questions were the in-depth, qualitative interviews, an examination of South Carolina's Constitution, and an examination of the legal arguments used in the three previous cases in South Carolina.

The fourth question focused on the decision by the state to fight this legal battle. Why did the state choose to contest the lawsuit? Did state representatives believe the funding formula in South Carolina provided for a "minimally adequate" educational

opportunity for all of its students?⁵⁶ Or, did these elected officials believe the plaintiffs were asking too much of the state? The data sources used to answer these questions were the in-depth, qualitative interviews, an examination of the legislation in South Carolina related to public education (K – 12), and an examination of South Carolina’s Constitution.

The final question examined the end result of the efforts to date. What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the case react to the decision? This question was limited to description of the facts and did not delve into potential implications of the 2005 ruling. The data sources used to answer this question were the in-depth, qualitative interviews and an examination of primary documents related to the case.

Abbeville is a case that needs to be subjected to greater academic examination. The purpose of this study was to begin that detailed examination by analyzing the processes that led to the case being filed in 1993. This detailed examination of *Abbeville* relied on in-depth, qualitative interviews, an examination of South Carolina’s Constitution, an examination of the legislation in South Carolina related to public education (K – 12), an examination of the legal arguments used in the three previous cases in South Carolina centered on school finance issues, and an analysis of school districts in South Carolina. Once this purpose is achieved the opportunity for additional studies related to *Abbeville* will be available to other researchers interested in the fields of school finance and school law.

Need for the Study

One fact related to the area of school finance is there is an abundance of information to sort through in order to gain a degree of understanding.⁵⁷ Dayton explained the conundrum in the following manner:

“Scholars and practitioners experience difficulty acquiring a thorough understanding of school funding litigation because of the numerous legal issues and strategies, the volumes of case, differences among states in constitutional provisions, legislation, legal precedents and history, the difficulty in tracking serial litigation resulting in multiple opinions at multiple judicial levels over large time spans, and other factors.”⁵⁸

Dayton’s assessment of the state of school funding litigation serves as sound justification for the need of this study. This study offers documentation related to the *Abbeville* case that will provide some degree of the clarity within the academic field of school finance.

On a macro-level, the need for this case study is two-fold. First, *Abbeville* is the latest in a long line of court cases where states’ funding formulas were challenged in court. Each of these cases is significant to the entire field of school finance litigation and requires in-depth examinations. Second, the data collected through a case study will help determine what actually happened in *Abbeville*, and this knowledge could potentially add to the fight for funding solutions elsewhere.

On a micro-level, the need for this study is also two-fold. First, this study provides the key participants in *Abbeville* a voice and documents their opinions to the case, the ruling, and its legacy. Second, regardless of its place nationally within the field of school funding litigation, *Abbeville* is significant to South Carolina and merits a detailed examination and documentation.

Finally, there is an additional need for this study and it relates to both a macro- and micro-level examination. It is impossible to determine the next step to take without first understanding the previous steps that have been taken. In other words, school finance reformers must understand this court case and the reason for the ruling before launching another legal battle. As a result, this study lays the foundation for future examinations of this court case.

This study collected the data necessary to gain a better understanding of the case. A case study was the ideal method for fulfilling this need because so little has been done on the case to date due to its relative newness. The case study approach combined the collection of historical data, which offer context and understanding, with interview data to provide thick description of *Abbeville*.⁵⁹

Limitations of the Study

The scope of this study automatically places limits on the effort. For example, this case study attempted to determine what happened in the *Abbeville* case and the factors that led to the lawsuit being filed in 1993. However, by focusing on centered on the case's inception, other questions, such as one exploring the affect this case had on South Carolina and the nation, go unanswered.

A similar limitation deals with the interview selection process. This study limited the people to be interviewed to key participants in an effort to provide them with a voice in the body of research. However, there are people who have voices related to *Abbeville* who were not heard in this study. Once again, this limitation is a product of the scope of the study.

Despite these limitations this study contributed to the field of school finance research by collecting and analyzing pertinent historical documents and interviewing eighteen individuals associated with *Abbeville* that, collectively, enhance the understanding of how South Carolina found itself involved in a legal battle over school finance issues in 1993.

Structure of the Study

In Chapter One, *Abbeville* is introduced by explaining the events surrounding the case. In addition, the purpose of the study, the need for the study, and limitations of the study are explained Chapter One. Chapter One concludes with a brief description of the structure of the entire study.

In Chapter Two, the background to school finance litigation from its inception to *Abbeville*. This discussion will include a summary of the significant school finance litigation and a discussion of the current trends. The chapter concludes with a discussion of the methodology implemented in this study.

Chapter Three provides the contextual framework for this study. In this chapter each of the eighteen participants is described related to their familiarity with *Abbeville*. The chapter also describes education in South Carolina, reviews political trends, and examines the state's economy.

Chapter Four will answer the five research questions associated with this study. Each question will be answered sequentially, using the appropriate data sources.

Chapter Five will present the conclusions for this study and identify the need for additional research associated with the *Abbeville* case.

Conclusion

Abbeville is the latest in a long line of school finance suits that have been argued in both federal and state courts. The facts surrounding *Abbeville* help explain what actually transpired in South Carolina, but the facts fail to explain the entire story. This case study sought to determine in greater detail what happened in *Abbeville* and how the suit came to fruition. This study adds to the volumes of data related to school finance litigation and proves a benefit to those interested in learning more about the events leading up to the *Abbeville* case.

Endnotes

¹ Elwood P. Cubberley, *School Funds and Their Appointments: A Consideration of the Subject with Reference to a More General Equalization of both the Burdens and the Advantages of Education* (New York: Teachers College Press, 1905), 3.

² *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). De jure segregation refers to segregation based on capricious factors, such as the color of one's skin or religious beliefs. In the *Brown* ruling, Chief Justice Warren wrote, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms" (p. 493). See also Heise, Michael Litigated Learning and the Limits of Law, 57 *Vand. L. Rev.* 2417 (*Vanderbilt Law Review*, November 2004), 2421.

³ De facto segregation refers to less capricious factors that lead towards segregation such as a person's address. Molly S. McUsic, The Future of *Brown v. Board of Education*: Economic Integration of the Public Schools, 117 *Harv. L. Rev.* 1334 (*Harvard Law Review*, March 2004), 1340 and Heise, supra note 2, 2421.

⁴ *Milliken v. Bradley*, 418 U.S. 717 (1974).

⁵ *Ibid.*

⁶ Debra L. Ireland, The Price of Education: What Local Control is Costing American Children, 6 *Scholar* 159 (*St. Mary's Law Review on Minority Issues*, Fall 2003), 164-165 and Richard D. Kahlenberg, *Brown v. Board of Education at Fifty: Have we Achieved its Goals?* 78 *St. John's L. Rev.* 295 (*St. John's Law Review*, Spring 2004), 297-300.

⁷ Eric A. Hanushek, The Impact of Differential Expenditures on School Performance, *Educational Researcher*, 18(4), 45-65 (May 1989). Retrieved at: <http://links.jstor.org/sici=0013-189X%2918%3A4%3C45%3ATIODEO%3E2.0.CO%3B2-X> on July 3, 2006. See also James S. Coleman, Ernest Q. Campbell, Carol J. Hobson, James McPartland, Alexander M. Mood, Frederic D. Weinfeld, and Robert L. York, *Equality of Educational Opportunity* (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1966).

⁸ *Abbeville County School District, et al., v. The State of South Carolina, et al.*, 3rd Judicial Circuit, case number 93-CP-31-0169. Throughout the remainder of this chapter this case will be referred to as "Abbeville 2005."

⁹ Litigation Challenging Constitutionality of K-12 Funding in the 50 States, Access website, available at: <http://www.schoolfunding.info/litigation/In-Process%20Litigations.pdf> (last viewed August 29, 2006). According to Access the following states currently have lawsuits in progress: Alaska, Arizona, Arkansas, Colorado, Connecticut, Georgia, Idaho, Indiana, Kansas, Kentucky, Maryland, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Texas, and Wyoming (a total of 26). The following states have no current lawsuit pending but have had the issue of school funding resolved in court: Alabama, California, Florida, Illinois, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, West Virginia, and

Wisconsin (19 total). The following five states have never had a lawsuit filed related to school funding issues: Delaware, Hawaii, Mississippi, Nevada, and Utah.

¹⁰ John Dayton, Serrano and its Progeny: An Analysis of 30 Years of School Funding Litigation, 157 Ed. Law Rep. 447 (*Education Law Report*, December 2001), 449.

¹¹ *Abbeville* 2005, supra note 8, 2. Though 40 school districts initiated the suit, the process of district consolidation paired that number down to 36. Of these, 8 were selected as the lead districts in the case.

¹² Currently, there are 86 school districts in South Carolina. This information can be viewed at the following website:

<http://ed.sc.gov/schools/> (last viewed September 17, 2006).

¹³ *Abbeville* 2005, supra note 8, 3.

¹⁴ *Ibid.*

¹⁵ S.C. Const. art. I § 3. The entire section reads, “[t]he privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

¹⁶ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1.

¹⁷ *Rodriguez*, 411 U.S. at 6-7.

¹⁸ Peter Enrich, Leaving Equality Behind: New Directions in School Finance Reform 48 *Vand. L. Rev.* 101 (*Vanderbilt Law Review*, January 1995), 128.

¹⁹ S.C. Const. art. I § 3.

²⁰ S.C. Const. art. XI § 3.

²¹ *Abbeville* 2005, supra note 8, 3.

²² Enrich, supra note 19, 104

²³ Kern Alexander and Richard G. Salmon, *Public School Finance* (Boston, Ma: Allyn and Bacon, 1995), 28.

²⁴ South Carolina Constitution, article XI §3.

²⁵ William E. Thro, To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform, 75 *Va. L. Rev.* 1639 (*Virginia Law Review*, November 1989), 1661.

²⁶ *Ibid.*, 1662.

²⁷ *Ibid.*, 1663. See also Jennifer L. Fogle, *Abbeville County School District v. State: The Right to a Minimally Adequate Education in South Carolina*, 51 *S.C. L. Rev.* 781 (*South Carolina Law Review*, Summer 2000), 790, who offers an example of a category II education clause, “the Kentucky Constitution’s requirement of an ‘efficient system of common schools’ is a minimum qualitative standard.”

²⁸ Thro, supra note 25, 1667-8. Once again, Fogle, supra note 27, 790 offers California as “a perfect example” since it, “provides, ‘[a] general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvements.’”

²⁹ Thro, supra note 25, 1668.

³⁰ *Abbeville* 2005, supra note 8, 3.

³¹ S.C. Const. art. XI § 3 and *Abbeville* 2005, supra note 8, 3.

³² S.C. Code §§ 59-20-10 to -80.

³³ Jackson L. Flanigan and Michael D. Richardson, *South Carolina Educational Finance* (Acton, Mass: Copley Publishing Group, 1992), 5-7.

³⁴ *Ibid.*

³⁵ S.C. Code §§ 59-20-10 to -80.

³⁶ *Ibid.*

³⁷ *Abbeville* 2005, *supra* note 8, 3.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 6.

⁴¹ *Ibid.*, at 4. The previous court case was *Richland County v. Campbell*, 294 S.C. 346.

⁴² *Abbeville* 1999, *supra* note 9, 58.

⁴³ *Ibid.*, at 69.

⁴⁴ *Ibid.*, at 66 – 67, which reads, “The State does not defend the circuit court’s conclusion that our Constitution’s education clause does not impose a qualitative standard, but rather argues that the appellants have not properly defined it.”

⁴⁵ South Carolina Constitution, *supra* note 24.

⁴⁶ *Abbeville* 1999, *supra* note 9, 68.

⁴⁷ *Ibid.*

⁴⁸ *Abbeville* 1999, *supra* note 9, 68.

⁴⁹ *Ibid.*, at 69.

⁵⁰ *Abbeville* 2005, *supra* note 8, 1.

⁵¹ *Ibid.*, 161.

⁵² *Ibid.*

⁵³ *Ibid.*, 162

⁵⁴ *Ibid.*

⁵⁵ *Richland County v. Campbell*, 294 S.C. 346; *Mosley v. Welch*, 39 S.E.2d 133; and *Hildebrand v. High School District No. 32*, 136 S.E. 757.

⁵⁶ *Abbeville* 1999, *supra* note 9, 58.

⁵⁷ Dayton, *supra* note 11, 449.

⁵⁸ *Ibid.*

⁵⁹ Allan J. Lichtman and Valerie French, *Historians and the Living Past* (Arlington Heights, Illinois: AHM Publishing Corporation, 1978), xvi.

CHAPTER 2: BACKGROUND AND METHODOLOGY

Introduction

School finance litigation has a long history in both federal and state courts with varying degrees of success. An understanding of this history is vital to any study related to school finance due to the fact that the past continues to influence, to one degree or another, current litigation focused on state funding approaches. This chapter includes a discussion on the history of school finance litigation and an explanation how the study was conducted.

Background

An appreciation for the *Abbeville* case is predicated upon knowledge of the history related to school finance struggles. An overview of school finance litigation is provided in this section by explaining the problems associated with school funding, reviewing significant court cases, and discussing various legal arguments associated with school funding struggles.

Problems Associated with School Funding

Nowhere in the Constitution of the United States of America does it mention education and, as a result, the responsibility of educating citizens falls within a state's jurisdiction.¹ A vast majority of states have education clauses in their constitutions.² According to most education clauses, state legislatures are charged with developing a funding formula to ensure students receive an education. At the heart of the school finance litigation for the past 35 years has been the funding formula implemented by states to provide students with an education.³

Historically, states have delegated some of the funding responsibility related to education to the local governing boards.⁴ These local school boards were constitutionally bound, if the state had an education clause, with the task of generating funds to supplement the state contribution to public education. School boards primarily generated local contributions to education from property taxes.⁵ Though both the state and local community each account for roughly half a school district's budget,⁶ the amount of variance from local community to local community in property tax value results in alarming disparities related to available resources for public education.

In some instances the schism between the affluent and impoverished school districts that results from a system relying on local property tax is so great it led one educational commentator to express shock that such disparities exist in America's state of education.⁷ This shock stems from the disadvantage students attending the "poorest" schools are placed in when compared to students from "wealthiest" ones.⁸ When considering the fact that people tend to live in clusters with others of similar earning potential, then a funding formula based on property tax could be viewed as discriminatory to low-income families.

Sufficient resources for school districts, regardless of their local property tax base, would result in a plethora of benefits for all students. These benefits include the maintenance of a safe environment conducive to learning. Sufficient funds are necessary to ensure competitive salaries and wages, which lead to a stable faculty and support staff. Technology, textbooks, and other resources could be made available to all students ensuring all had an equal "access to knowledge."⁹ A complete list of benefits for students who attend schools with proper funds would be extensive.¹⁰

Unfortunately, America's current system of public education does not ensure educational opportunities for all students. West wrote about "the increasing economic and educational gap between our suburban white worlds and the impoverished worlds of the inner cities, where most African American and Latino students go to school."¹¹ The preponderance of evidence related to the education gap indicates that the performance of minority students on standardized tests lags behind that of white students, and that minority students are not being sufficiently prepared for life after high school.¹² For example, the average of white students on the 2001 SAT was 105 points higher than the African American average. On the verbal score, the difference was 96 points higher for white students.¹³ Unfortunately, the evidence concerning the education gap does not stop with standardized tests. In virtually every conceivable measurement non-Asian minority students perform lower than their white counterparts. The net result of this education gap is that too many minority students are failing in America's schools.¹⁴

One possible explanation for the education gap is the fact that an inordinate number of minority students go to school in large, urban, and minority dominated school districts.¹⁵ Of the ten largest school districts in America, nine are composed of a majority of minority students.¹⁶ Another example of the alarming distribution of minority students in America's schools is illustrated by the fact that in the 1996 – 1997 school year, 70% of African American students and 75% of Hispanic students enrolled in schools with 50 to 100% minority representation in the entire school population.¹⁷

There are a multitude of problems associated with large, urban school districts,¹⁸ and these problems end up creating two types of costs for school districts. The first type of cost, a financial one, places additional monetary burdens on urban school districts as

they struggle to meet various expectations, including increased demands in the areas of special education, limited-English proficiency, security, remediation, and intervention efforts.¹⁹ Additional costs are a direct result of the unique needs of large, less affluent student populations. A second cost, a performance or outcome one, stems from the fact that “peers generally exert a strong influence on student performance and that students from lower socioeconomic backgrounds in particular suffer from being surrounded solely or primarily by students from similarly impoverished backgrounds.”²⁰ In other words, the opportunity for academic success is restricted when minority students attend school in large urban school districts.

The current state of education in America, when considering the plight of minority students, has led some to classify it as more separate and unequal than before the *Brown* ruling.²¹ Funding reformers have held that changes to the way schools receive money from states could create a playing field where all students could truly enjoy equal educational opportunities.²² One of the more succinct summaries on the need for school funding reform came from this observation of the current state of education by Jonathon Kozol, “[t]he nation is hardly ‘indivisible’ where education is concerned. It is at least two nations, quite methodically divided, with ... liberty for some ... and justice ... only for the kids whose parents can afford to purchase it.”²³

Review of the First Three Significant School Finance Cases

A deeper understanding of the issues related to school finance requires an examination of the first three significant court cases to this area of study. These cases are significant to school finance because of the role they played in formulating the current efforts and arguments. In addition, there are other equally significant cases that will be

reviewed at a later point in this text. The three cases are *Brown v. the Board of Education* (1954), *Serrano v. Priest* (1971), and *San Antonio Independent School District v. Rodriguez* (1973).²⁴

Brown v. Board of Education (1954)

Some might question the placement of the landmark desegregation court case with school finance litigation. However, *Brown*'s influence transcended the reversal of *Plessy v. Ferguson* (1896).²⁵ This section will summarize the *Brown* case and discuss its implications to subsequent school finance litigation.

In 1896, the Supreme Court handed down a decision that effectively legalized discrimination based on a person's skin color and established the "separate but equal" standard with the *Plessy* ruling. The process of reversing that ruling took nearly a half-century, culminating with the *Brown* ruling.²⁶ The *Brown* case, a class action lawsuit, consisted of five separate plaintiffs, including one from South Carolina, who were heard as one case by the Supreme Court due to the similar constitutional issues.²⁷ The case centered on the practice of segregation and asked the Supreme Court to examine the practice of "separate but equal."²⁸

In a unanimous decision, the Supreme Court ruled that the practice of separating races inherently denied minority students the opportunity to be equal.²⁹ One of the more significant statements from the *Brown* ruling related to the issue of school finance came in the opinion written by Chief Justice Warren when he wrote, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."³⁰ In other words, any state that has

an education clause is required to ensure all students are treated equally, according to Chief Justice Warren. Eventually, legal questions related to this statement would be applied to the field of school finance reform and ask state and federal courts to examine the funding practices of states.

The *Brown* ruling introduced two significant ideas that continue to affect education. First, the opinion established the idea of “equal educational opportunities” for all students.³¹ The second significant idea dealt with the “opportunity of education” from the Warren passage.³² These two statements effectively turned education from a privilege to a right for all students. As a right guaranteed by most state constitutions, education enjoyed greater constitutional protection with the *Brown* ruling.

The transition from the Court’s ruling that rendered desegregation unconstitutional to practice in public education proved to be difficult. How was America to ensure that all students had the same educational opportunities? The first attempts focused on desegregation. However, two Supreme Court rulings significantly limited attempts at desegregation by ruling that inter-district desegregation efforts were unacceptable solution to the *Brown* ruling.³³ The struggles associated with implementing desegregation led reformers to push for changes in the funding formulas as an alternative approach to ensuring equal educational opportunities for all students.³⁴

The equal educational opportunities idea, which gained prominence with the *Brown* ruling, seemed to be perfect for school finance reform. Do students enjoy equal educational opportunities when they might attend school in a system that allows for significant variance in the amount of funding? The answer to that question appears to be no when considering this statement by Dayton and Dupree, “[p]roperty-wealthy districts

can raise large amounts of money, while property-poor districts may fail to generate adequate funding for their schools even when levying the maximum legal tax rate.”³⁵ A funding formula that relies on property tax as a basis limits the educational opportunities of students based on zip code or socioeconomic status, which is just as capricious as limiting a student’s right to learn based on skin color.³⁶

Brown’s significance to school finance litigation came in the emphasis of equal educational opportunities for all students. That concept within the *Brown* ruling provided reformers with the legal precedence to use the Fourteenth Amendment as justification for seeking relief from courts that were asked to consider school finance inequity issues.

Serrano v. Priest (1971)

Though there were other court cases dealing with school finance issues before it,³⁷ the *Serrano v. Priest* suit proved to be the first to successfully argue that a funding formula based on property tax did not ensure all students the same quality of education.³⁸ This section will review the *Serrano* case and discuss its implications within the realm of school finance litigation.

Before discussing *Serrano*, a review is required of two significant studies that influenced this case as well as many others.³⁹ The first, written by a doctoral student from the University of Chicago in 1968, contended that education was a basic right guaranteed to all by the Fourteenth Amendment’s equal protection clause. This study also argued that fluctuations in spending significantly limited educational offerings for those attending school in property-poor school districts.⁴⁰

The second study, written by Coons, Clune and Sugarman in 1970, argued that states were creating a suspect class, or group, by allowing school funding, a state

responsibility, to be carried out by the local community through property taxes.⁴¹ Since property values fluctuated greatly from community to community within a state, the funding formula being used could not ensure a “fiscally neutral” school system.⁴² The conclusion of this study was that funding for public education, to be truly fiscally neutral, had to be based on the wealth of the entire state as opposed to wealth of the local community.⁴³

In the wake of these two studies, a legal challenge was filed concerning the funding formula used in California. The plaintiffs in the *Serrano* case argued that California’s funding formula violated both state and federal guarantees to equal protection.⁴⁴ Originally dismissed by lower courts, the case was eventually argued before the state supreme court.

The California Supreme Court’s ruling held that the funding system, which allowed for a ratio between the low and high school districts of 1 to 10,000 to exist, discriminated against poor students due to the fact that these children were more likely to live in property-poor communities.⁴⁵ In the opinion, the ruling was supported using both the equal protection clause of California’s Constitution and the Fourteenth Amendment of the Constitution of the United States of America. Based on these two documents, the court ruled that the case was “justifiable” since the funding formula was not fiscally neutral. The court also held that education was a basic right that should be guaranteed to all, regardless of personal wealth, which was a suspect class. With the suspect classification for people with limited income, the California Supreme Court determined poor people as a group that was more suspect to being discriminated against by others.⁴⁶ As a result of this classification, the court required the state to meet a higher standard,

commonly referred to as strict judicial scrutiny, to justify the funding formula.⁴⁷

Ultimately, the ruling determined that California's funding formula was unconstitutional.⁴⁸

The *Serrano* ruling, when handed down in 1971, held high hopes for funding formula reformers. Though the ruling is considered by experts in the field of school law to be "well-reasoned,"⁴⁹ the significance of this case was short lived due to the decision handed down by the Supreme Court in *Rodriguez*.

San Antonio Independent School District v. Rodriguez (1973)

One of the first cases filed after the *Serrano* ruling was *Rodriguez*, which was filed in a federal court as opposed to a state one. The hope was that one court case could do for the nation what *Serrano* did for California.⁵⁰ This section will review the *Rodriguez* case and its influence on subsequent school finance litigation.

In a similar issue as *Serrano*, the plaintiffs in the *Rodriguez* case were Mexican-American parents whose children attended school in a Texas school district with a low property tax base. Though the ratio between the low school district and the high was not as great as in California, it was still a 1 to 10 (for every one dollar a property-poor district received a wealthy one would receive ten) in Texas at the time of the suit.⁵¹ The district court agreed with the *Serrano* ruling, classified education as a fundamental right, viewed the use of property tax as discriminatory, and ruled in favor of the plaintiffs. However, the case was quickly appealed to the Supreme Court.⁵²

The Supreme Court took a different interpretation of the issues related to ensuring all students had an equal educational opportunity through more equitable funding formulas. On a 5-4 split decision, the Supreme Court first ruled that poverty did not

constitute a suspect class based on the fact, presented by the state, that “poor” children attended school in “wealthy” school districts as well as property-poor ones.⁵³ With this decision by the Supreme Court to not recognize students attending school in a property-poor school district as a suspect class, the Court removed the possibility of applying strict scrutiny in the case. This decision gave a significant advantage to the state in that it had only to establish a “rational test,” or explanation, for the distribution of limited resources allocated for public education.⁵⁴

In addition, the Court ruled that education was not a fundamental right since it was not mentioned in the Constitution of the United States.⁵⁵ With this ruling, Texas only had to demonstrate a rational basis for implementing its funding formula and provide evidence that the funding formula met the standards established in the education clause of the state constitution.⁵⁶ As a result, the Fourteenth Amendment of the Constitution of the United States of America had no influence on the case. Once again, Texas avoided having to meet the requirements under “strict judicial scrutiny” and would only have had to provide evidence of a “compelling state interest” to base the funding of schools on property taxes.⁵⁷

Though the dissenting justices considered the *Rodriguez* ruling “a retreat from our historical commitment to equality of educational opportunity,”⁵⁸ the standing had a profound influence on the efforts to reform school funding formulas. Almost immediately, all other litigation dealing with school funding in the federal court system ceased.⁵⁹ In addition, the burden on those seeking finance reforms had to find a new tact since the federal equal protection clause argument did not hold up in the *Rodriguez* ruling.

Post-*Rodriguez* Reform Efforts

With the *Rodriguez* ruling, the landscape of school finance reform efforts changed overnight. Both *Serrano* and *Rodriguez* used legal arguments that centered on the perceived rights granted to all citizens under the Constitution of the United States, namely rights under the Fourteenth Amendment's Equal Protection Clause.⁶⁰ However, these arguments were rendered invalid with the *Rodriguez* ruling, though such legal contentions did not actually end with the *Rodriguez* ruling.⁶¹ As a result, a new legal approach needed to be developed to justify the need for financial reform. This section will review the evolution of the legal arguments related to school finance litigation and review court cases that established precedence for the *Abbeville* ruling.

Some scholars have divided the 35 years of school finance litigation into three waves of litigation.⁶² The first wave, which began in the late 1960s and ended in 1973, included court cases that argued for equality of financial allocation using the Equal Protection Clause of the Fourteenth Amendment.⁶³ The first wave ended with the *Rodriguez* ruling. The second wave, which lasted from 1973 to 1989, included cases that placed less emphasis on equal protection and focused more on the wording of the education clauses in state constitutions.⁶⁴ The legal arguments against funding formulas during the second wave used the state equal protection clause, the state education clause, or both.⁶⁵ The third wave, from 1989 to present, includes court cases that have shifted the focus from equity to adequacy.⁶⁶ The cases in the third wave contend the state funding formula prevents students in the state from receiving an adequate education, according to the state education clause.⁶⁷

The core argument of school finance litigation after *Rodriguez*, or the second wave of litigation, centered on the state education clause and whether constitutionally mandated obligations were being met.⁶⁸ Though the main legal justification changed from the Equal Protection Clause to the education clauses, the ultimate goal of a more equal, or equitable, funding formula for all students remained the same. Underwood and Sparkman defined equity as a push to guarantee “that each child, regardless of circumstance--residence, socio-economic status, national origin, or handicapping conditions--be provided with adequate educational opportunities.”⁶⁹

According to Peter Enrich,⁷⁰ post-*Rodriguez* legal arguments for financial reforms took on one of three approaches. One possible argument was to focus exclusively on “state’s equal protection clause” and make a distinction between the state and federal requirements and guarantees for equal protection.⁷¹ A second possible legal contention combined both the state equal protection clause approach and the education clause into one, two-pronged, argument. This argument, like the first argument identified by Enrich, distinguished itself from the *Rodriguez* ruling since education is a right within the state constitution.⁷² The final possible approach identified by Enrich was to focus exclusively on the wording in the state education clauses.⁷³

Almost every state has an education clause in their constitution, though the nature of each clause differs from state to state.⁷⁴ William Thro has divided the education clauses into one of four categories.⁷⁵ Category I, the least demanding, requires states to just create a public education system.⁷⁶ Category I education clauses make no reference to the quality of the system of public education, only that such a system must be established by the state. Theoretically, states with a Category I education clause could

fulfill their constitutional obligations by creating just one school for the entire state. Category II includes educational clauses that establish a minimal qualitative standard regarding the quality of public education.⁷⁷ Category III education clauses possess specific wording related to the purpose of education and requirements.⁷⁸ Category IV, the education clauses with the strictest requirements, use specific language related to the quality of education a state is constitutionally required to maintain.⁷⁹ The higher the categorical rating an education clause receives, theoretically, the more susceptible the funding formula is to a legal challenge.

It was during the second wave of finance litigation that two court cases were resolved in different states that would eventually influence the *Abbeville* case in South Carolina. In the first of these cases, *Robinson v. Cahill* (1973),⁸⁰ the New Jersey Supreme Court ruled the equal protection clause did not apply to the concerns raised by the plaintiffs. However, the Supreme Court focused on the wording of the state constitution and ruled that the funding formula used in 1973 did not ensure a “thorough and efficient” school system.⁸¹ Interestingly, the actual wording of the education clause in the New Jersey Constitution does not include the words “thorough and efficient,” rather this phrase is an interpretation by the state supreme court. The significance of this case lies in the court’s willingness to interpret the meaning of New Jersey’s education clause. South Carolina’s Supreme Court showed a similar willingness to interpret the education clause when it introduced the phrase “minimally adequate” and defined it.⁸²

The next case to be reviewed in this section is *Horton v. Meskill* (1977).⁸³ The contention in *Horton* centered on Connecticut’s use of property tax to fund public education.⁸⁴ In *Horton*, the court deemed education a fundamental right and argued that

the reliance on property tax to fund schools failed to consider the differences in wealth that would exist.⁸⁵ However, the court stopped at that point. It did not define an appropriate formula for education or tell the legislature what it needed to do to correct the problem.⁸⁶ The significance of this case related to *Abbeville* lies in the similarities between Connecticut and South Carolina's education clauses.⁸⁷ *Horton* established a precedence for South Carolina's Supreme Court to rule a funding system based on property tax unconstitutional.

The focus of school finance litigation did not shift from equity to adequacy, or from the second to the third wave of litigation, until a suit in Kentucky, called *Rose v. Council for Better Education, Inc.* (1989), was resolved.⁸⁸ The focus on adequacy as opposed to equity or equality is interesting and merits greater discussion. By definition, adequacy requires states to ensure a minimum quality of education for all students.⁸⁹ This shift to adequacy proved significant on multiple fronts. First, adequacy, unlike equality or equity, did not require taking money from the wealthy school districts to supplement the poor ones.⁹⁰ In addition, adequacy could prove to be a more effective path towards equity. If all students are guaranteed a minimum quality of education, then it stands to reason that all students would graduate with a decent education, or all students would have similar educational opportunities, regardless of where they lived.⁹¹ In other words, adequacy might achieve what equity failed to do, a quality education for all students.

The *Rose* case is credited with introducing the adequacy standard into the school finance arena based, in part, on how the court approached the complaint.⁹² The court never focused on issues dealing with equity or equality, rather the focus was exclusively on the education clause and how students were performing.⁹³ The court examined the

wording of the education clause and ruled the General Assembly had failed to meet its constitutional obligations.⁹⁴

The court went on to classify the Kentucky legislature as the exclusive governmental agency charged with creating and maintaining public education.⁹⁵ The court ordered the legislature to develop a new funding scheme that “will guarantee to all children the opportunity for an adequate education.”⁹⁶

One additional note related to the *Rose* decision is necessary in order to examine the *Abbeville* case. The Kentucky Constitution uses the word “efficient” to describe the desired public school system.⁹⁷ The Kentucky Supreme Court defined “efficient education” to mean that all students have the opportunity to develop the following abilities:

- “(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- (ii) sufficient knowledge of economics, social, and political systems to enable the student to make informed choices;
- (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

- (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.”⁹⁸

The significance in the definition of efficient education provided by Kentucky’s Supreme Court is its complete and exhaustive nature.

Adequacy legal efforts have resulted in more successful challenges than either equality or equity. However, the latest push within the area of adequacy is to establish a clear link between increased funding and student achievement.⁹⁹ If researchers were to demonstrate that a certain percent increase in funding for education would result in a percent increase in student performance, then it would be fairly easy to determine the optimal funding level for every school in America.¹⁰⁰

There have been reports refuting any strong positive correlation between funding levels and student performance.¹⁰¹ In addition, there have been studies geared at refuting the findings of those studies that failed to find any strong positive correlation between expenditures and student performance.¹⁰² The net result of those efforts is a lack of clarity. Michael Heise summarized the confusion:

“What is reasonably clear is that something as complex as student academic achievement almost assuredly does not pivot on any single variable, such as funding, teaching quality, racial composition, or class size. Equally clear is that

schools with a majority of poor students rarely, if ever, perform as well as their middle-class counterparts.”¹⁰³

The net results of the many school finance cases has been mixed, with some courts upholding current funding practices and others requiring changes to ensure equal educational opportunities for all students. Adequacy efforts hope to have a lasting affect on the school finance reform by providing all students, regardless of their parents’ income, skin color, or gender, an opportunity to learn. Or, put another way, “[t]he goal of education finance system should be the identification of adequate, but not excessive, funding levels for education because we all can agree that a quality education is imperative for the economic and social well being of our country.”¹⁰⁴

Conclusion

The *Abbeville* decision is the latest in the long line of court cases, beginning with *Serrano*, where states have undertaken the task of determining the constitutionality of their funding formulas. The significance of the field of school finance litigation lies in the assumption that a revised funding formula would provide all students with an equal educational opportunity. There are many questions related to *Abbeville* that need to be answered to better determine the significance of this court case. This study sets out to answer the following questions: 1. What political and economic conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit? 2. How were the eight lead school districts selected to be a part of the plaintiffs’ case? 3. What legal arguments did both the plaintiffs and defendants use in *Abbeville*? 4. Why did the state choose to contest the lawsuit? and 5. What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the case react to the decision?

Methodology

Abbeville is a case that centers on school finance issues. The case was last ruled on in 2005. However, this type of factual information related to the case fails to provide the rich description that is necessary for greater understanding. Specifically, factual information fails to adequately identify how the case came to fruition and what transpired in the lawsuit. As a result, an in-depth scholarly study was necessary to collect the data that could actually answer the questions related to the origins of the *Abbeville* case. The conceptual framework of case study research established the necessary guidelines to collect the data and answer the research questions for this study. The methodology for this study will be described in this section.

Case Study Approach

By definition, case study research “is a form of qualitative research that endeavors to discover meaning, to investigate processes, and to gain insight into an in-depth understanding of an individual, group, or situation.”¹⁰⁵ Other components of case study research, or “empirical inquiry”, include an investigation of a current phenomenon and the use of multiple data sources.¹⁰⁶ Finally, case study research is ideal when the current phenomenon appears to be inseparable from other factors related to the event being studied.¹⁰⁷

The goal of case study research is to provide the field with “a richly detailed description” of an event.¹⁰⁸ In order to obtain this thick, rich description effectively, the case study researcher, according to Yin, must take certain steps. First, a clear set of research questions must be developed, since these questions will guide the entire

study.¹⁰⁹ Ideally, case study research questions will be limited to “how” and “why” based on the nature of inquiry.¹¹⁰ This first step is vital for the case study to be meaningful.

The research questions for this case study have already been identified in this chapter. However, a discussion on how these questions guided the study and why they were significant is necessary. The research questions guided this study by creating parameters that not only limited, but also directed the effort. The significance of these questions lies in the fact that collectively they identified the necessary data sources to richly describe the origins of the *Abbeville* case and provided additional insight into what happened.

Yin’s next recommended the researcher develop a research design that explains how the data collected will answer the research questions.¹¹¹ Failure to create a research design could result in the collection of data that have nothing to do with the research questions. In addition, without a research design guiding the study, research questions could easily go unanswered. A research design serves as a guide for both the researcher and the reader of the completed study.¹¹² A research design for this study is included at the end of this chapter (see Appendix A).

According to Yin, the omission of the research design in case study research explains why the quality of case study research generally pales in comparison to the quantity.¹¹³ Yin also suggested one possible reason¹¹³ for the lack of quality case study research stems from the researcher’s inability to address three pertinent points related to case studies.¹¹⁴ The first of these points is the need to be able to define the case that is going to be studied. The next point is to determine the data sources to be gathered for the study. Finally, the last point is to be able to explain what will be done with the data that is

to be collected.¹¹⁵ Each of these points raised by Yin must be addressed related to this study.

The court case that is to be studied in this project is defined as *Abbeville County School District v. the State of South Carolina* (2005). An examination of this case produced additional understanding on how the case came to fruition and what actually transpired in the case. The data sources used in this study were an analysis of South Carolina's Constitution, summary of the legislation related to public education (K-12) at the time the case was filed, the data from the school districts in the case at the time of the case, in-depth qualitative interviews, and previous court cases within South Carolina addressing school finance.

All of the data sources used in this case study were interdependent with the case itself. The first data source, the analysis of South Carolina's Constitution, clearly related to the *Abbeville* ruling on multiple levels. When the state Supreme Court remanded the *Abbeville* case back to the lower court it based that decision on the education clause of the state constitution.¹¹⁶ The constitution's education clause directly related to *Abbeville* and, as a result, required closer examination to better understand the case.

The second data source, the legislation related to public education (K-12) at the time the case was filed, was pertinent to the *Abbeville* case since these laws represented the education clause in practice. These laws represented the General Assembly's attempts to meet their constitutional obligation related to public schools. As a result, these laws must be studied in order to better understand the *Abbeville* ruling.

The third data source, the previous court cases in South Carolina dealing with school funding issues, also related to the *Abbeville* case. American law is based on

precedence and these cases established the legal precedence for the *Abbeville* decision. Without these cases, the circuit judge would not have a reference point to formulate the basis for the *Abbeville* ruling.

The fourth data source, the data on the school districts that made up the plaintiffs in the *Abbeville* case, played an important role in this inquiry. The circuit court examined the academic performance of the lead school districts in the suit before rendering a ruling. These data influenced the 2005 ruling and will help answer the research questions guiding this study.

Finally, the eighteen in-depth, qualitative interviews, the last data source in this study, proved to be pertinent to the study since they offered a perspective on *Abbeville* that otherwise would not have been obtainable. The opinions of those involved in the case needed to be heard and their insight provided the desired understanding of *Abbeville* that cannot be gleaned as effectively any other way.

Case study research presents a number of advantages that merit mentioning. First, case study research is ideal for education due to the difficulty associated with controlling for variables in a classroom.¹¹⁷ In addition, case study research is not bound to a particular data source; rather it encourages the researcher to triangulate the data in support of conclusions or answers.¹¹⁸ Finally, case study research is ideal “to situations where it is impossible to separate the phenomenon’s variables from their context,”¹¹⁹ as is the case with *Abbeville*. The latter two advantages of case study research explain why such a method of inquiry was ideal for obtaining greater understanding of *Abbeville* and explaining the origins of the case.

Interview Protocol

The purpose of the interview portion of this study was to provide the key participants in the *Abbeville* case with a voice in the research to better understand how the case came to be and what transpired in the suit. The importance of interviews in research, including case study research, was succinctly explained by Steinar Kvale, who wrote, “[i]f conversations did not exist, there would hardly be any shared knowledge about the social scene.”¹²⁰ The following describes how the interviews were conducted and how the data from the interviews generated “shared knowledge” about the *Abbeville* case.

The selection process for the participants was limited by the number of people who had a high degree of familiarity with the case. A concerted effort was made to ensure that all sides of the case were properly represented in the interviews. This included representation from the plaintiff and defendant legal teams, school officials, state level politicians with familiarity of *Abbeville*, and judges who oversaw portions of the case. Some people were unwilling to participate in this study due to real or perceived conflicts and limitations, a concerted effort was made to obtain proportionate representation in each of the subgroups as possible, which are explained below.

Each of the participants of this study had to fit within one of the following four subgroups, 1) the legal team (attorneys and consultants), 2) superintendents/parents, 3) politicians, and 4) judges. The selection process adhered to the following guidelines. First, the person must be recognized for her or his familiarity with the case by multiple sources. Second, preferential treatment was given to individuals with state representation as opposed to regional or local authority. This second point applied mostly to politicians.

Finally, as was already stated, the third criterion was the participant's willingness to participate.

A snowball sampling strategy guided the selection process related to the interviews. Starting with the lead attorneys for both the plaintiffs and defendants, these interviewees were asked who else should be interviewed for this study. Those familiar with the case were able to recommend other people to interview who also had a high degree of familiarity with *Abbeville* as well. In fact, a number of excellent participants in this study were not originally considered potential participants. The interview pool proved more than adequate as a result of snowball sampling. In addition, one indicator of the thoroughness of this study was when the names recommended by the final participants regarding who else ought to be invited to participate were people that had already participated in the study. Once saturation was achieved the interview process was deemed sufficiently complete.

The objective of this study was to conduct at least eight to ten semi-structured qualitative interviews. The final number of interviews was eighteen. The additional interviews were necessary to ensure adequate representation in each of the subgroups. Each prospective participant was sent a letter explaining the case study, the expected time of the interview, and the types of questions that the individual could expect to be asked. The letter was followed up with a phone call, within five days of sending the letter, to determine the prospective participant's interest and availability. The completion of the eighteen interviews required five different trips to South Carolina from Virginia. The interviews were conducted on nine different days spread out over one month. The interviews lasted between 45 minutes and an hour. Each interview was recorded, using

both a tape and digital recorder, and observational field notes were kept to document the anecdotal subtleties of the experiences.

Individuals were asked to become subjects in the research process. This is not a matter that can be taken lightly. For that reason, all necessary steps were taken to ensure participation was voluntary and that the participants agreed with the way their voice was being reported in the study. First, all of the requirements associated with the Institutional Review Board at Virginia Tech were met. Once authorized to proceed by the Institutional Review Board, the interviewees were asked to state on the recorder their willingness to participate in the interview process and sign a consent to participate form. Upon completion of the interview, the proceedings were transcribed within four days of the actual event. Once each interview was transcribed, a copy of the transcription was sent to the interviewee to verify its accuracy and provide the participant one last chance to clarify meaning.¹²¹ This process of allowing interviewees to review transcripts is often referred to as member checks and resulted in quite a few corrections to the original transcriptions.

A pilot study was completed that consisted of two interviews. In the pilot study the participants were asked the questions mentioned below. The interview protocol was monitored for effectiveness of questions, interview format, and ease of the process for the participants. As a result of the pilot study the interview protocol was modified to ensure the questions were providing the participants an opportunity to answer all of the five research questions guiding this study.

The questions asked each participant varied slightly, depending on the individual's role during with the case. What follows is a list of questions that were asked

each possible type of participant in this study. Questions were structured in a way that allowed the participant to talk about the case generally at first, and work towards more specific issues as the interview developed.

Questions to the Legal Teams (attorneys, consultants, etc.)

1. Tell me about your role in the case.
2. Discuss your reactions to the *Abbeville* experience from its inception to the 2005 ruling.
3. Why was the timing right for the suit to be filed when it was filed?
4. How were the eight lead school districts selected? Did that prove to be the optimal group for the case?
5. What legal arguments were used in the case? How did you develop them?
6. What was the core issue for you in the *Abbeville* case? Have they been addressed?
7. What reactions did you have concerning the 2005 decision?
8. Who else should I talk to?
9. Is there anything else you would like to tell me about *Abbeville*?

Questions for the Lead Superintendent/Parents/Politicians/Judges

1. Discuss your role in the *Abbeville* case.
2. Discuss your reactions to the *Abbeville* experience from its inception to the 2005 ruling.
3. Why was the timing right for the suit to be filed when it was filed?
4. How were the eight lead school districts selected? Did that prove to be the optimal group for the case?
5. What was the core issue for you in the *Abbeville* case? Have they been addressed?

6. What legal arguments did the plaintiffs and defendants in the case use? How effective were these arguments?
7. What reactions did you have concerning the 2005 decision?
8. Who else should I talk to?
9. Is there anything else you want to tell me about *Abbeville*?

In addition, each interviewee was asked basic demographic questions at the beginning of the interview to help create a relaxed atmosphere. These questions included name and the interviewee's willingness to participate in this study.

Data Collection

In qualitative research, there are safeguards in place to ensure the credibility of the data collected related to the study. These safeguards include the following: 1. Clear procedures for collecting the data, 2. The use of triangulation, 3. External or peer reviews, and 4. Member checks.¹²² Each prospective interviewee received a letter detailing the study, the interview protocol, and an invitation to participate in the effort to study *Abbeville*. That letter was followed up with a phone call to determine the interest of the individual and schedule a time to meet, if applicable. The actual interview took place in South Carolina, the location determined by the interviewee, and lasted between 45 minutes and one hour. Once completed, the interviews were transcribed and a copy of the transcription was sent to the interviewee to ensure accuracy.

The data collection process for the historical documents entailed retrieving the information, summarizing it, reviewing the summary and findings with an external peer committee, and presenting it in a clear manner. This study's design was structured around the importance of triangulation in qualitative research, emphasizing the collection of

multiple data sources to verify findings. By using multiple data sources this case study presented a clear picture of the *Abbeville* case, how it came to be and what happened in the case.

As for external or peer reviews, I had privilege of working with a committee of four accomplished professors. As the interview and historical data were collected, I worked with my committee members to help make sense of what it meant in regard to the *Abbeville* case. As for the point on member checks, that has already been addressed in this section and recognized as an important part to sound qualitative interviews.

Data Analysis

The final aspect related to the interviews that merits definition and discussion related to the process of managing and interpreting the data. The importance of this point lies in the fact that the qualitative interviews produced a significant amount of information, over 200 pages of transcriptions, and a clear method had to be in place in order to make sense of these data.¹²³

Each interview was transcribed verbatim in the most expedited manner possible. Once transcribed, the interview transcript was read in its entirety, which helped identify trends and highlight interesting aspects pertinent to the interview.¹²⁴ Once the reading and highlighting of the transcript were complete, a developed summary sheet of the interview documented the interviewer's reactions to the data. Finally, a copy of the transcription was sent to the respective participant for final verification of accuracy.

A file was maintained on each interviewee. The folder contained the field notes from the interview, the transcribed interview, the summary sheet from the researcher, a digital copy of the actual interview, and any notes that came back from the member

check. The folder system helped in the managing and organizing process related to data collection. The folder on each interview was kept in a plastic crate, and the crate stayed with me throughout this study.

With the interviews organized, the next step was to organize and analyze the data obtained through the interviews. The process of finding meaning in the interviews entailed three steps.¹²⁵ The first step required the data to be summarized through a process called surface analysis.¹²⁶ The summary of the data began as each interview was summarized after the transcription. However, the next step that bolstered the gestalt summary was the development of coding categories. These coding categories were centered on the research questions.

The third step in finding meaning in qualitative interviews was to group the interview data into themes that centered on the five research questions.¹²⁷ The process of moving from coding categories to grouping these data into themes was aimed at identifying the overarching points that come through in all, or most, of the interviews. For the themes to truly summarize the data they must represent all of the data. Once a theme that was representative of all the data was identified, it increased the credibility of the findings.¹²⁸

The themes from the interviews, along with the summary of the historical data were related back to the research questions to develop answers to each of them. These data sources provided the rich description necessary to be able to address the purpose of this study, namely to explain how *Abbeville* came to fruition and what happened in the case.

Transferability

Another consideration for qualitative research is transferability. By definition, transferability refers to the degree to which the study's findings are relevant. According to Guba and Lincoln, transferability parallels "external validity" in quantitative research.¹²⁹ The methodology applied to this study was consistent with the methodology utilized in similar studies. These steps included providing the interviewees with the opportunity to provide in-depth answers, field notes on each of the interviews, and the use of member checks. The process of following these standardized approaches to qualitative research increased the transferability of this study.

Credibility

Steps were taken to increase the credibility of this study. These steps were vital when considering the fact that participants were asked to recall the facts surrounding a court case that began in 1993. A lot of time had passed since *Abbeville's* inception, and without the steps addressing credibility, the findings and the study would have suffered.

The first step that bolstered the study's credibility was the use of multiple data sources to answer the five research questions. This process of using multiple data sources, referred to as triangulation, increased the comprehensiveness of the study as well as the accuracy of the findings. The use of triangulation was vital on issues related to *Abbeville* that lacked consensus. For example, there were multiple possible explanations for the process used to select the eight lead school districts to argue the plaintiffs' case. To help add clarity to this issue, interview data were supported with primary documents (published reports of the trial and newspaper clippings) and student performance data

within the plaintiff school districts. Similar efforts at triangulation were used with over points in this study that lacked clear explanation.

Dependability

In addition to credibility and transferability, a qualitative researcher must address dependability issues, which include audit trails and detailed field notes.¹³⁰ This study ensured dependable data by providing a detailed explanation of how the data was collected and then following those prescribed steps clearly. The detailed explanation related to data collection and interpretation is provided below. The researcher's field notes documented the steps taken in this study and included anecdotal observations related to each step.

Confirmability

A final consideration for qualitative research is confirmability. The research design for this study addressed the need for confirmability by relying on multiple data sources the phenomenon in question. If this study relied exclusively on one data source, the confirmability would be suspect. However, in addition to the interviews, this case study collected and analyzed primary historical documents that helped illuminate the inception of the *Abbeville* case and describe what happened.

Confidentiality

Qualitative interviews must ensure confidentiality of the participants to ensure the accuracy of the data collected.¹³¹ Though the issue of confidentiality might appear to be difficult with the nature of this study since the interview pool was so small and each participant has a specialized role related to the case, steps were taken to increase the anonymity of the participants. Each participant's confidentiality was increased through

the following steps. Each participant received a pseudonym and virtually all references to actual people were removed from the findings. The only actual people mentioned in this study are judges that wrote pertinent opinions related to *Abbeville* and prominent political figures. In addition, I transcribed each interview, which means I am the only person to actually have heard all eighteen interviews. Finally, quotes from each interview were used in the body of this study, and those quotes were presented without giving any indication of who said them.

In addition, I followed the Rights of Human Subjects Protocol required by the Institutional Review Board at Virginia Polytechnic Institute and State University. These guidelines included having the interviewee sign a consent form and informing each participant of his or her right, namely any point could he or she could choose to be removed from the study.

The Role of the Researcher

While conducting interviews, it is imperative that the interviewer not allow his or her personal biases, previous knowledge or other factors influence the process.¹³² One way for a researcher to guard against influencing an interview is to identify his or her role as the researcher.¹³³ My role as a researcher was to create a forum for the participants to discuss the *Abbeville* case without allowing my knowledge of the case to influence the interview process. In addition, I worked to ensure that the essence of the participants' reactions emerged in the interview process through the questions asked in a semi-structured format.¹³⁴ I began this study as a graduate student fascinated by school finance issues. I sincerely believe a funding system that relies on property tax to generate revenues is unfair to a segment of the student population.

Conclusion

A case study approach to the *Abbeville* case resulted in a description of this school finance court case from multiple data sources. This resulted in a more clear answer to the research questions that guided this study. Yin put it best, when he deemed case study “research remarkably hard, even though case studies have traditionally been considered to be ‘soft’ research. Paradoxically, the ‘softer’ a research technique, the harder it is to do.”¹³⁵

Endnotes

¹ Patricia F. First and Barbara M. DeLuca, The Meaning of Educational Adequacy: The Confusion of DeRolph, *Journal of Law and Education* (April 2003), 186. The federal government does contribute financially to education through strictly voluntary programs such as title I or No Child Left Behind Act.

² Peter Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 *Vand. L. Rev.* 101 (*Vanderbilt Law Review*, January 1995), 105. Enrich wrote, "Mississippi presents a complex case. In 1960, in response to the threat of desegregation, Mississippi amended its constitution to replace its education clause with a provision that allowed the legislature 'in its discretion' to provide for public schools. This provision was subsequently amended in 1987, to direct the legislature to 'provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.'" Iowa also does not appear to have an educational provision. Iowa's constitution can be accessed at the following website: <http://www.legis.state.ia.us/Constitution.html#a9s1> (last viewed September 14, 2006).

³ Debra L. Ireland, The Price of Education: What Local Control is Costing American Children, 6 *Scholar* 159 (*St. Mary's Law Review on Minority Issues*, Fall 2003), 161 and Enrich, *supra* note 2, 104.

⁴ Lauren A. Wetzler, Buying Equality: How School Finance Reform and Desegregation Came to Compete in Connecticut, 22 *Yale L. & Pol'y Rev.* 481 (*Yale Law and Policy Review*, Spring 2004), 485.

⁵ Ireland, *supra* note 3, 161. See also Larry J. Obhof, Rethinking Judicial Activism and Restraint in State School Finance Litigation, 27 *Harv. J.L. & Pub. Pol'y* 569 (*Harvard Journal of Law and Public Policy*, Spring 2004), 571.

⁶ Sarah M. Burke, An Analysis of Resource Inequality at the State, District, and School Levels, *Journal of Educational Finance*, 24(4), 435-458 (Spring 1999), 438; Wetzler, *supra* note 4, 484; Ireland, *supra* note 3, 167. Typically, state and local contributions to public education are 45 – 50% each with the federal government's contribution making up the difference.

⁷ Jonathan Kozol, *Savage Inequalities: Children in America's Schools* (New York: Crown Publishing, 1991), 2.

⁸ Quentin A. Palfrey, The State of Judiciary's Role in Fulfilling Brown's Promise, *Michigan Journal of Race and Law*, Fall 2002, 2.

⁹ John I. Goodlad, The Occupation of Teaching in Schools. In *The Moral Dimensions of Teaching*, eds. Goodlad, Soder, and Sirotnik (San Francisco: Jossey-Bass Publishers, 1990), 21. See also Richard D. Kahlenberg, Brown v. Board of Education at Fifty: Have we Achieved its Goals? 78 *St. John's L. Rev.* 295 (*St. John's Law Review*, Spring 2004), 297-300; Ireland, *supra* note 3, 162-163.

¹⁰ Palfrey, *supra* note 8, 2.

¹¹ Martha S. West, Equitable Funding of Public Schools Under State Constitutional Law, 2 *J. Gender Race & Just.* 279 (*Journal of Gender, Race and Justice*, Spring 1999), 280-281.

¹² See College Board, 2001 College Bound Seniors: A Profile of SAT Program Test Takers 6 (2001), available at:

<http://www.collegeboard.com/sat/cbsenior/yr2001/pdf/NATL.pdf>. For a discussion on the educational gap, please refer to West, *supra* note 11, 280 and C. Joy Farmer, The No Child Left Behind Act: Will it Produce a New Breed of School Financing Litigation?, 38 *Colum. J.L. & Soc. Probs.* 443 (*Columbia Journal of Law and Social Problems*, Summer 2005), 450-451.

¹³ *Ibid.*

¹⁴ Michael Heise, Litigated Learning and the Limits of Law, 57 *Vand. L. Rev.* 2417 (*Vanderbilt Law Review*, November 2004), 2437; Farmer, *supra* note 12, 449; and Hillary Rodham Clinton, Brown at Fifty: Fulfilling the Promise, 23 *Yale L. & Pol’y Rev.* 213 (*Yale Law and Policy Review*, Winter 2005), 215.

¹⁵ Charles T. Clotfelter, Helen F. Ladd, and Jacob Vigdor, Segregation and Resegregation in North Carolina’s Public School Classrooms, *Terry Sanford Institute of Public Policy*, August 2002. Available at:

<http://www.pubpol.duke.edu/people/faculty/ladd/san02-03.pdf>. Last viewed July 18, 2006. See also Palfrey, *supra* note 8, 2.

¹⁶ Michael Heise, Revisiting *Brown v. Board of Education*: 50 Years of Legal and Social Debate, 90 *Cornell L. Rev.* 279 (*Cornell Law Review*, January 2005), 285.

¹⁷ *Ibid.*, 284.

¹⁸ Gary Orfield, and J. T. Yun, The Civil Rights Project at Harvard University: Regression in American Schools. Available at:

http://www.civilrightsproject.harvard.edu/research/deseg/regression_American_schools99.pdf. Last viewed February 20, 2006.

¹⁹ Robert E. Slavin, How Can Funding Equity Ensure Enhanced Achievement?, *Journal of Education Finance*, 24(4), (spring 1999) 519 – 528.

²⁰ James E. Ryan, Schools, Race, and Money, 109 *Yale L.J.* 249 (*Yale Law Journal*, November 1999), 257.

²¹ *Brown v. Board of Education*, 347 U.S. 483. See also Judith A. Winston, Achieving Excellence and Equal Opportunity in Education: No Conflict of Law, *Administrative Law Review*, Summer 2001, 1012 and First and DeLuca, *supra* note 1, 189.

²² Enrich, *supra* note 2, 108.

²³ Kozol, *supra* note 7, 212.

²⁴ *Brown*, 347 U.S. 483; *Serrano v. Priest*, 487 P.2d 1241; *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1.

²⁵ *Plessy v. Ferguson*, 163 U.S. 537. See also Michael Heise, The Jurisprudential Legacy of the Warren Court, 59 *Wash. & Lee L. Rev.* 1309 (*Washington and Lee Law Review*, Fall 2002), 1324-1325 and Ryan, *supra* note 20, 252. For example, Heise wrote, “[f]rustration with the slow and uneven pace of school desegregation, coupled with the implications of the *Milliken* decision, helped prompt school finance litigation. Advocates hoped that by attacking funding inequalities they would be able to equalize education by improving opportunities for poor and minority students” (pp. 1324 – 1325).

²⁶ Lynn T. Brown, *Brown v. Board of Education and School Desegregation: An Analysis of Selected Litigation* (Unpublished dissertation at Virginia Polytechnic Institute and State University, April 2004). Dr. Brown’s dissertation provides a concise summary of the legal efforts leading up to *Brown*.

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- ²⁷ Jack M. Balkin, *What Brown v. Board of Education Should Have Said* (New York: New York University Press, 2001), 3.
- ²⁸ *Brown*, supra note 21, 493.
- ²⁹ The actual wording from the Warren opinion read, “Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.” *Brown*, supra note 24, 493.
- ³⁰ *Brown*, supra note 21, 493.
- ³¹ *Ibid.*
- ³² *Ibid.*
- ³³ *Milliken v. Bradley*, 418 U.S. 717 and *Keyes v. School District Number 1*, 413 U.S. 189.
- ³⁴ Enrich, supra note 2, 123 – 124 wrote, “[d]isappointment with the accomplishments of the school desegregation efforts and the growing focus on socioeconomic obstacles to opportunity together made the deficiencies in the funding of urban schools an obvious target. While the setbacks in the fight for racial equality could have led to a turn away from a focus on equality, instead they simply led to a turn away from a focus on race.”
- ³⁵ John Dayton, and Anne Dupre, School Funding Litigation: Who’s Winning the War?, 57 Vand. L. Rev. 2351 (*Vanderbilt Law Review*, November 2004), 2356.
- ³⁶ Christine Kiracofe, The Natural Relationship Between Desegregation and School Funding Litigation, 184 Ed. Law Rep. 1 (*West’s Education Law Reporter*, March 2004), 1 and Rebell, Michael A. Educational Adequacy, Democracy, and the Courts. In *Achieving High Educational Standards for All: Conference Summary* Timothy Ready, Christopher Edley, Jr. and Catherine E. Snow (Eds.), (Washington, D.C.: National Academy Press), 220.
- ³⁷ *McInnis v. Shapiro*, 293 F. Supp. 327 and *Burruss v. Wilkerson*, 397 U.S. 44.
- ³⁸ Kern Alexander and M. David Alexander, *American Public School Law: Fifth Edition* (Belmont, California: West Thompson Learning, 2001), 888 and Dayton and Dupree, supra note 35, 2359.
- ³⁹ Allan R. Odden and Lawrence O. Picus, *School Finance: A Policy Perspective* (Boston: McGraw Hill, 2000), 31.
- ⁴⁰ Arthur Wise, *Rich Schools—Poor Schools: A Study of Equal Educational Opportunity* (Chicago: University of Chicago Press, 1968), 94 – 101.
- ⁴¹ John Coons, William Clune, and Stephen Sugarman, *Private Wealth and Public Education* (Cambridge, MA: Belknap Press of Harvard University Press, 1970).
- ⁴² *Ibid.*, 245. See also Christopher Roellke, Preston Green, and Erica H. Zielewski, School Finance Litigation: The Promise and Limitations of the Third Wave, *Peabody Journal of Education*, 79(4), 2004. On page 109 they defined fiscal neutrality as, “The quality of education should not be a function of district wealth, but of state wealth.”
- ⁴³ Coons, et al., supra note 41, 439.
- ⁴⁴ R. Craig Wood and Bruce D. Baker, An Examination and Analysis of the Equity and Adequacy Concepts of Constitutional Challenges to State Education Finance Distribution Formulas, 27 U. Ark. Little Rock L. Rev. 125 (*University of Arkansas at Little Rock Law Review*, Fall 2004), 137.
- ⁴⁵ *Serrano*, supra note 24, 1244.

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- ⁴⁶ Kern Alexander and Richard G. Salmon, *Public School Finance* (Boston: Allyn and Bacon, 1995), 31.
- ⁴⁷ Odden and Picus, supra note 39, 30.
- ⁴⁸ *Ibid*, 1251 – 1262.
- ⁴⁹ Alexander and Alexander, supra note 38, 888.
- ⁵⁰ See Odden and Picus, supra note 39, 33. They wrote, “Some have argued that the *Rodriguez* case should not have been filed so as to force an appeal to the U.S. Supreme Court so early in the process of school finance litigation, assuring that it would have been better to win several cases at the district and state level and to show that states could respond to a decision overturning the school finance system and that such decisions would not simply put a state’s education system into a state of disarray.”
- ⁵¹ *Rodriguez*, supra note 24, 12.
- ⁵² *Ibid*, 45.
- ⁵³ *Ibid*, 16 – 17.
- ⁵⁴ See Odden and Picus, supra note 39, 34 and Roellke, Green, and Zielewski, supra note 41, 107.
- ⁵⁵ *Rodriguez*, supra note 24, 33 – 34.
- ⁵⁶ Dayton and Dupre, supra note 35, 2363.
- ⁵⁷ Odden and Picus, supra note 39, 29.
- ⁵⁸ *Rodriguez*, supra note 24, 71.
- ⁵⁹ See Palfrey, supra note 8, 16; Alexander and Alexander, supra note 38, 889; and Karen Swenson, School Finance Reform Litigation: Why Are Some State Supreme Courts Activist and Others Restrained?, 63 *Alb. L. Rev.* 1147 (*Albany Law Review*, 2000), 1148.
- ⁶⁰ Odden and Picus, supra note 39, 31. See also Julie K. Underwood, School Finance Adequacy as Vertical Equity, 28 *U. Mich. J.L. Reform* 493 (*University of Michigan Journal of Law Reform*, Spring 1995), 500. Dr. Underwood defined the equality effort as “equal resources for each child in the system.” And, Deborah Versteegen, Towards a Theory of Adequacy: The Continuing Saga of Equal Educational Opportunity in the Context of State Constitutional Challenges to School Finance Systems, 23 *St. Louis U. Pub. L. Rev.* 499 (*St. Louis Public Law Review*, 2004), 501 called the equality effort a movement towards “wealth neutrality.”
- ⁶¹ Enrich, supra note 2, 128.
- ⁶² William E. Thro, Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision and Model, 35 *B.C. L. Rev.* 597 (*Boston College Law Review*, May 1994), 598; Ryan, supra note 25, 267-270; Julie K. Underwood and William E. Sparkman, School Finance Litigation: A New Wave of Reform, 14 *Harv. J.L. & Pub. Pol’y* 517 (*Harvard Journal of Law and Public Policy*, Spring 1991), 517; and Underwood, supra note 60, 498.
- ⁶³ Bruce D. Baker and Preston C. Green, Can Minority Plaintiffs use the Department of Education Implementing Regulations to Challenge School Finance Disparities?, *West’s Education Law Reporter*, April 2003, 680.
- ⁶⁴ Underwood, supra note 60, 501.
- ⁶⁵ Roellke, Green, and Zielewski, supra note 41, 106.

⁶⁶ Michael A. Rebell, *Educational Adequacy, Democracy, and the Courts in Achieving High Educational Standards for All: Conference Summary* (Washington, D.C.: National Academy Press, 2002), 222.

⁶⁷ *Ibid.* See also Palfrey, *supra* note 8, 21.

⁶⁸ Odden and Picus, *supra* note 39, 35. Enrich, *supra* note 2, 129 talks about how the equality argument refused to die, even after a “crushing setback” with the *Rodriguez* ruling.

⁶⁹ Underwood and Sparkman, *supra* note 62, 517.

⁷⁰ Enrich, *supra* note 2, 106-108.

⁷¹ *Ibid.*, 106.

⁷² *Ibid.*, 107.

⁷³ *Ibid.*, 108.

⁷⁴ Enrich, *supra* note 2, 106. Enrich claims that Mississippi, one of five states to not have its funding formula challenged in court, might not have an education clause in its constitution.

⁷⁵ William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform*, 75 Va. L. Rev. 1639 (*Virginia Law Review*, November 1989), 1661.

⁷⁶ *Ibid.*, 1662.

⁷⁷ *Ibid.*, 1663. See also Jennifer L. Fogle, *Abbeville County School District v. State: The Right to a Minimally Adequate Education in South Carolina*, 51 S.C. L. Rev. 781 (*South Carolina Law Review*, Summer 2000), 790, who offers an example of a category II education clause, “the Kentucky Constitution’s requirement of an ‘efficient system of common schools’ is a minimum qualitative standard.”

⁷⁸ *Ibid.*, 1667-8. Once again, Fogle, *supra* note 77, 790 offers California as “a perfect example” since it, “provides, ‘[a] general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvements.’”

⁷⁹ *Ibid.*, 1668.

⁸⁰ *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973). It is noted here that the *Robinson* case went to court seven different times before the plaintiffs felt like the defendants had correctly adhered to the original ruling in the case.

⁸¹ *Ibid.*, 297.

⁸² *Abbeville County School District v. the State*, 335 S.C. 58, 65. Throughout the remainder of this chapter this case will be referred to as *Abbeville* 1999. The entire definition of minimally adequate is discussed in Chapter One of this text.

⁸³ *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977).

⁸⁴ *Ibid.*, 373

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, 374.

⁸⁷ Connecticut’s education clause reads, “[t]here shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation” (Conn. Const. art. VIII §1). South Carolina’s education clause reads, “[t]he General Assembly shall provide for the maintenance and support of a system

of free public schools open to all children in the State and shall establish, organize and support other public institutions of learning, as may be desirable” (S.C. Const. art. XI § 3).

⁸⁸ *Rose v. The Council for Better Education, Inc.*, 790 S.W.2d 186 (Kent. 1989).

⁸⁹ Michael A. Rebell, *Adequacy Litigation: A New Path to Equity?*, 141 PLI/NY 211 (*Practising Law Institute, New York Practice Skills Course Handbook Series*, May 2004), 218-220 and Deborah A. Versteegen and Robert C. Knoepfel, *Equal Education Under the Law: School Finance Reform and the Courts*, 14 J.L. & Pol. 555 (*Journal of Law and Politics*, Summer 1998), 560.

⁹⁰ Rebell, *supra* note 89, 219 and Wood and Baker, *supra* note 44, 143-145.

⁹¹ Rebell, *supra* note 89, 214 and First and DeLuca, *supra* note 1, 189.

⁹² Fogle, *supra* note 77, 803.

⁹³ William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & Educ. 219 (*Journal of Law and Education*, 1990), 236.

⁹⁴ *Rose*, *supra* note 88, 189. The wording in the Kentucky Constitution regarding education states “the general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state” (Kent. Const. § 183).

⁹⁵ *Ibid*, 212.

⁹⁶ *Ibid*, 215.

⁹⁷ Kent. Const., *supra* note 94.

⁹⁸ *Rose*, *supra* note 88, 212.

⁹⁹ Heise, *supra* note 16, 299-300.

¹⁰⁰ Steve Smith, *Education Adequacy Litigation: History, Trends, and Research*, 27 U. Ark. Little Rock L. Rev. 107 (*University of Arkansas at Little Rock Law Review*, Fall 2004), 119-120.

¹⁰¹ Eric A. Hanushek, *The Impact of Differential Expenditures on School Performance*, *Educational Researcher*, 18(4), 45-65. Retrieved at: <http://links.jstor.org/sici=0013-189X%2918%3A4%3C45%3ATIODEO%3E2.0.CO%3B2-X> (last viewed July 3, 2006). And James S. Coleman, Ernest Q. Campbell, Carol J. Hobson, James McPartland, Alexander M. Mood, Frederic D. Weinfeld, and Robert L. York, *Equality of Educational Opportunity* (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1966).

¹⁰² Larry V. Hedges, Richard D. Laine, and Rob Greenwald, *An Exchange: Part 1: Does Money Matter? A Meta-Analysis of Studies of the Effects of Differential School Inputs on Student Outcomes*, *Educational Researcher*, 23(3), 1994, 5-14. Retrieved at: <http://links.jstor.org/sici=0013-189X%281994040%2923%3A3%3C5%3AAEPIDM%3E2.0.CO%3B2-U>. Last viewed July 3, 2006.

¹⁰³ Heise, *supra* note 14, 2446.

¹⁰⁴ Smith, *supra* note 100, 124.

¹⁰⁵ Marguerite G. Lodico, Dean T. Spaulding, and Katherine H. Voegtle, *Methods in Educational Research: From Theory to Practice* (San Francisco: Jossey-Bass, 2006), 269.

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- ¹⁰⁶ Robert K. Yin, *Case Study Research: Design and Methods* (Beverly Hills, CA: Sage Publications, 1984), 23 and Sharon B. Merriam, *Case Study Research in Education: A Qualitative Approach* (San Francisco: Jossey-Bass Publishers, 1988), 10.
- ¹⁰⁷ Ibid.
- ¹⁰⁸ Lodico, et al., supra note 105, 270.
- ¹⁰⁹ Yin, supra note 106, 19.
- ¹¹⁰ Ibid, 17.
- ¹¹¹ Ibid, 28.
- ¹¹² Ibid, 29. Yin identifies the following five features of a complete research design: “(1) a study’s question; (2) its proposition, if any; (3) its unit(s) of analysis; (4) the logic linking the data to the propositions; and (5) the criteria for interpreting the findings.”
- ¹¹³ Ibid, 29.
- ¹¹⁴ Ibid, 29-30.
- ¹¹⁵ Ibid, 13-14.
- ¹¹⁶ Fogle, supra note 77, 805.
- ¹¹⁷ Merriam, supra note 106, 2.
- ¹¹⁸ Ibid, 10. See also Norman K. Denzin and Yvonna S. Lincoln, Introduction: Entering the Field of Qualitative Research. In *The Handbook of Qualitative Research* Norman K. Denzin and Yvonna S. Lincoln (eds.), (Thousand Oaks, CA: Sage Publications, 1994), 2.
- ¹¹⁹ Merriam, supra note 106, 10.
- ¹²⁰ Steinar Kvale, *InterViews: An Introduction to Qualitative Research Interviewing* (Thousand Oaks, CA: Sage Publications, 1996), 8.
- ¹²¹ Yvonna S. Lincoln and Egon G. Guba, *Naturalistic Inquiry* (Newbury Park, CA: Sage, 1985), 314.
- ¹²² Michael Q. Patton, *Qualitative Evaluation and Research Methods* (Newbury Park, CA: Sage Publications, 1990), 56.
- ¹²³ Harry F. Wolcott, *The Art of Fieldwork* (Walnut Creek, Ca.: AltaMira Press, 1995), 195.
- ¹²⁴ J. Amos Hatch, *Doing Qualitative Research in Education Settings* (Albany: State University of New York Press, 2002), 53.
- ¹²⁵ Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: A Sourcebook of New Methods* (Beverly Hills, CA: Sage Publications, 1984), 32.
- ¹²⁶ Ibid, 33.
- ¹²⁷ Patten, supra note 122, 403.
- ¹²⁸ Ibid, 403-405.
- ¹²⁹ Egon G. Guba and Yvonna S. Lincoln, Competing Paradigms in Qualitative Research. In *The Handbook of Qualitative Research* Norman K. Denzin and Yvonna S. Lincoln (eds.), (Thousand Oaks, CA: Sage Publications, 1994), 114.
- ¹³⁰ John W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Traditions* (Thousand Oaks, CA: Sage Publications, 1998), 45.
- ¹³¹ Kvale, supra note 120, 114-115.
- ¹³² James Spradley, *Ethnographic Interview* (New York: Holt, Rinehart, and Winston, 1979), 41.
- ¹³³ Ibid, 43.

¹³⁴ William L. Miller and Benjamin F. Crabtree, Depth Interviewing. In *Approaches to Qualitative Research: A Reader on Theory and Practice*, Sharlene N. Hesse-Biber and Patricia Leavy (eds.). (Thousand Oaks, CA: Sage Publications, 2004), 202.

¹³⁵ Yin, *supra* note 106, 26.

CHAPTER THREE: CONTEXTUAL FRAMEWORK

Introduction

The previous two chapters described this study's purpose and methodology. Before the data can be analyzed and the findings presented, a contextual framework must be created. A well crafted framework will enhance the significance of the findings presented in Chapter Four by providing a background. The contextual framework provides the foundation for the data by defining and explaining the core concepts. Without it, data lose their meaning and research questions go unanswered.

In Chapter Three, the contextual framework for this study will be presented. The core concepts of this study that require additional explanation prior to discussing the findings are a description of the eighteen participants, a timeline detailing the factual events related to Abbeville, a review of education in South Carolina, an analysis of political trends in the state, and an overview of South Carolina's economy. This information will enhance the meaning and significance of the findings that will be presented in the next chapter.

The Eighteen Participants

The primary data source for this study consisted of eighteen open-ended, qualitative interviews. The participants were selected for this study based on their familiarity with *Abbeville* and their perspective to the case. Each of the eighteen participants is described in this section.

The data collection portion of this study consisted of eighteen open-ended, qualitative interviews. All eighteen interviews were transcribed, coded, and grouped into themes related to the five research questions. This process helped organize the various

responses related to each of the five research questions. The participants were assigned into one of four previously designated subgroups, namely judge, legal team (lawyers, consultants, expert witnesses, etc.), school officials, and politicians (elected or appointed figures with a state-level perspective of the issues surrounding *Abbeville*). Table 3.1 shows the breakdown of the eighteen participants related to the four subgroups:

Table 3.1: Distribution of Participants in Subgroups

Subgroup	Number of Participants
Legal Team	6
School Officials	5
Politicians	6
Judges	1
Total Participation	18

Though efforts were made to include additional judges in this study, the following excerpt from a judge explains why he, and others, could not agree to be interviewed:

“Because of my involvement in the case..., and because of the status of the case at the current time, I am not permitted under Canon 3 of the Code of Judicial Conduct (SC Appellate Court Rule 501) to make any public or non-public comment which might reasonably be expected to affect its outcome or impair its fairness or which might substantially interfere with a fair trial or hearing... While [the lawsuit] is pending in that regard, I must respectfully refrain from any comment.”¹

This study set out to ensure each participant’s anonymity to increase the accuracy and authenticity of the data collected. One step taken to address anonymity was to assign each participant a pseudonym. Below each participant will be introduced, using the pseudonym, to illustrate his or her knowledge and experience related to *Abbeville*. There is no guarantee that the gender of the pseudonym matches the actual gender of the

participant. The six participants within the legal subgroup, all assigned a color surname, are as follows:

Ms. Ruby Red: One of the three lead attorneys for the plaintiffs. Red began preparing for the *Abbeville* trial in 1999 and continued working on the case, *pro bono*, through the 2005 ruling.

Dr. Oscar Orange: Orange is a professor of educational leadership at one of the leading universities in South Carolina. Orange was closely associated with the group of superintendents who started to question the action, or inaction, of the state in the early 1990s. In addition, Orange served as a consultant to the plaintiffs in the early years of the case, though the plaintiff attorneys eventually opted to use other educational experts as the lawsuit progressed.

Mr. Bud Black: Black was one of the three lead attorneys for the defense. Black was retained by the state after the 1999 ruling, when the state Supreme Court interpreted the education clause to mean “minimally adequate”², and continues to work on the case at the present time.

Ms. Wendy White: White is the legal advisor for the state’s Department of Education. White played an active role in the case’s beginnings. She helped select the legal counsel for the defense, while the Department of Education was listed as a defendant in the lawsuit.

Mr. Bobby Blue: Blue is the legal advisor for a statewide educational organization that represents virtually all of the school districts in South Carolina. Blue’s organization has followed the case closely, supported the plaintiffs’ efforts, and Blue wrote an *amicus* brief on behalf of the plaintiffs.

Dr. Penny Purple: Purple, at the time the *Abbeville* case went to trial, was a teacher certification and training expert for the state's Department of Education. As a result, in the trial Purple was considered an expert witness and spent over seven days on the stand discussing the qualifications of teachers throughout the state of South Carolina.

There were five participants within the school subgroup. Each pseudonym was named after a tree and they are discussed below:

Mr. Peter Pine: Pine has been the superintendent of one of the lead plaintiff school districts for almost 20 years. Pine, a charismatic storyteller, testified in the trial and his school district is directly affected by the ruling.

Dr. Sally Spruce: Spruce has been an assistant superintendent for one of the plaintiffs' lead school districts for almost five years. Spruce testified in the trial, though, at the time she was serving as a building principal.

Dr. Mitchell Maple: Maple was a superintendent of a school district in the Pee Dee area, where the lawsuit originated. His school district joined the lawsuit, though it was not one of the eight lead districts. Maple was actively involved in the beginnings of *Abbeville* and attended 77 of the 102 days in court.

Dr. Alan Aspen: Aspen is a superintendent of a non Pee Dee school district that was selected to be one of the eight lead districts. As a result, Aspen testified in the trial and attended as many days as he could.

Dr. Julie Juniper: Juniper recently retired as superintendent of one of the lead school districts not located in the Pee Dee area. When Juniper came to the school district, the case was about to go to trial and she had little time to prepare for her experiences on the stand. Juniper now works for the Department of Education.

Within the political subgroup there were six participants. Each pseudonym was named after a piece of furniture and the six are briefly described below:

Ms. Tiffany Table: Table works as the education advisor for a state level political figure. In this capacity, Table keeps up on all issues related to education, advises the political figure, and helps develop policies. As a result, Table is closely following the *Abbeville* case.

Ms. Mandy Mirror: In the late 1990s, Mirror was elected to a prominent state-level political position and opted to not seek re-election at the end of her second term in that position. Mirror was originally named as a defendant in the case, but was able to convince the plaintiffs that she supported their efforts. Throughout the trial Mirror encouraged those in her department to honor requests for data from either the defendants or the plaintiffs.

Mr. Charlie Chair: A long time democratic leader in the state, Chair has served in various political positions throughout his career. These positions include state senator and governor. Before the decision was made to sue the state, representatives from a number of school districts met with Chair to determine his willingness to represent them in court. Though he declined the invitation; he did recommend the individual who was eventually retained as the plaintiffs' lead attorney.

Representative Olivia Ottoman: Ottoman has been a member of the state House of Representatives for nearly fifteen years. During that time she has crusaded for the various needs of her constituents. All three of the school districts in her electoral district joined the *Abbeville* lawsuit in the early 1990s and one was selected as a lead school district.

Ottoman fought to resolve the case through negotiations but her efforts proved fruitless.

Ottoman testified in the trial.

Dr. Rhonda Rocker: Rocker works for the state and testified in the trial. Rocker oversees a committee that collects and interprets data related to education. Rocker has also spent years as a public school administrator in the greater Columbia, South Carolina area.

The one judge who participated in this study is described below:

Judge Rory Rabbit: After a distinguished career in law that included appointments to various prestigious courts, Rabbit retired recently from public service. Rabbit played a significant role in one of the *Abbeville* rulings.

Within each of the subgroups, participants were divided into one of three categories: Plaintiff Advocate, Defendant Advocate, or Undecided/Unclear. To be classified in the Undecided/Unclear subgroup, the participant could not directly support either side of the case in preparation or testimony. Table 3.2 illustrates the breakdown of the participants based on this second classification:

Table 3.2: Participants Disaggregated by Subgroup and View of the Case

Subgroup	Sided with Plaintiffs	Sided with Defense	Undecided or Unclear	Totals
Legal Team	3	2	1	6
School Officials	5	0	0	5
Politicians	3	1	2	6
Judges	0	0	1	1
Totals	11	3	4	18

Though it appears participants who sided with the defense are underrepresented, the overall numbers are skewed by the fact that all five school officials sided with the plaintiffs. If the participants in the school and judge subgroups are taken out of the distribution, 50% (6 of 12) of the legal and political participants sided with the plaintiffs,

25% (3 of 12) sided with the defense, and 25% (3 of 12) were either undecided or unclear.

All of the participants were knowledgeable about *Abbeville* and a vast majority was involved intimately in the legal arguments. Eleven of the eighteen participants either testified, argued, or heard arguments related to the case. An additional four participants were deposed in preparations for the case. Of the remaining three participants, one attended the trial 77 of the 102 days, one is a former Governor of South Carolina, and one is an education advisor to a prominent state politician.

The eighteen participants have been described in greater detail to help establish their familiarity with *Abbeville*. In addition, the eighteen participants offer differing perspectives on the case. As a result, the collective perspective and understanding the eighteen participants offer *Abbeville* is meaningful.

Timeline Summary of *Abbeville*

The following presents a chronological timeline of *Abbeville*. The information contained in this timeline presents a contextual picture of the lawsuit.

1977 – The Education Finance Act (EFA) passed.

1984 – The Education Improvement Act (EIA) passed.

1993 – Seventeen superintendents in the Pee Dee area of the state vote to sue the state (August 12).

1993 – A letter sent to all the school districts in the state detailing the suit and inviting their participation in the effort. An additional 23 school districts across the state join the suit.

- 1993 – The *Abbeville* case is filed in the Court of Common Pleas for Lee County (November 1).
- 1995 – Plaintiffs file a motion to clarify and amend their legal contentions. The plaintiffs’ complaints center on the equal protection clauses of the state and federal constitutions, the state’s education clause, and an alleged violation of the Education Finance Act of 1977.
- 1995 – Defendants file a motion to have the lawsuit dismissed based on the amended plaintiffs’ complaints. Defendants argued that “the facts as alleged did not constitute violations of the State or federal constitutions as a matter of law and that no private right of action exists under the EFA.”³
- 1996 – Judge Thomas J. Cooper granted the defendants’ motion to dismiss (September 20).
- 1996 – The plaintiffs appealed Judge Cooper’s decision to dismiss the lawsuit to the state Supreme Court (September 20).
- 1997 – The state Supreme Court heard the *Abbeville* arguments (October 9).
- 1999 – The state Supreme Court handed down the *Abbeville County School District v. the State* decision.⁴ The state Supreme Court ruled on each of the three core plaintiff arguments. For the claim that the current funding practices violated the EFA, the Supreme Court ruled the legislation does not create a private cause of action since the act was not created “for the special benefit of a private party.”⁵ In addition, the state Supreme Court had previously denied legal challenges to the EFA and EIA in 1988.⁶ The equal protection clause arguments were also settled in previous court cases: *Richland* on a state level and *Rodriquez* on a national level.⁷ As a

result, the funding practices were deemed neutral and the plaintiffs failed to show that inequities were created with discriminatory intent. The state Supreme Court called the use of the education clause a “novel issue.”⁸ In defining the state’s education clause, the Court offered the following statement, “We hold today that the South Carolina Constitution’s education clause required the General Assembly to provide the opportunity for each child to receive a *minimally adequate* education” (italics added).⁹ The state Supreme Court proceeded to define minimally adequate to mean all students should have the opportunity to develop the ability to read, write, and speak, and know math, physical science, economics, social and political systems, history, government processes, and develop academic and vocation skills. As a result, the trial court’s decision to dismiss the lawsuit was affirmed in part and remanded in part. Specifically, the trial court had to hear the case based on the clarification related to the education clause.

1999 – The state retains the services of Robert E. Stepp, Elizabeth Van Doren Gray, and A. Jackson Barnes as outside attorneys to handle the *Abbeville* case.

2001 – Plaintiffs file another amendment to their complaint that reiterated previous contentions, sought monetary damages and jury trial (January).

2001 – The trial court granted the plaintiffs’ motion to amend, but denied the request for a jury trial (June 1).

2003 – The plaintiffs submit a motion to the court allowing the number of trial school districts to be reduced from the original 36 to 8. The motion to reduce the number of plaintiff districts was allowed by the court (June 20).

- 2003 – The defendants submit a motion related to the plaintiffs’ 2003 motion that accused the state’s inactions were a result of the racial composition of the plaintiff school districts. The defendants requested the Court remove this allegation from the motion. The Court granted the defendants’ motion.
- 2003 – *Abbeville* goes to trial (July 28).
- 2004 – The trial portion of *Abbeville* ends (December 9).
- 2005 – Judge Thomas J. Cooper hands down a decision in *Abbeville*. In the ruling, Judge Cooper ruled that the state was not meeting its constitutional obligation related to education based on the fact that children in poor, rural school districts begin school with a significant achievement gap. This achievement gap denies student the opportunity to receive a minimally adequate education. Judge Cooper ordered a judgment for the plaintiffs that was “consistent with the findings and conclusions set out” in the opinion (December 29).¹⁰
- 2006 – The General Assembly authorizes a pilot program to study the effectiveness of a pre-kindergarten program on student achievement. Of the \$24 million set aside for this pilot program, only \$15 million made it to the plaintiff school districts. Multiple school districts reported the state allocation failed to cover all of the costs associated with the pilot program. In addition, the plaintiff school districts did not have the classroom space necessary to serve all of the qualified students.
- 2006 – Both the plaintiffs and the defendants file motions asking the judge to reconsider his decision. Both sides are still waiting for Judge Cooper to act on the motions. It is anticipated the case will be appealed to the state Supreme Court once these motions are acted upon.

Education in South Carolina

In addition to requiring a more complete understanding of the participants in this study, the contextual framework necessitates a thorough description of education in South Carolina. In this section, the current status of education in South Carolina will be reviewed. First, the examination will compare South Carolina to the rest of the nation on key educational issues. In addition, state and county figures related to enrollment trends, operating expenses, and teacher salaries will be presented. Finally, the newly elected state Superintendent for South Carolina created a Transition Leadership Team and this team offered 97 recommendations “for state action to promote achievement.”¹¹ The recommendations related to *Abbeville* will be reviewed in this section.

South Carolina Compared to the Nation

The National Education Association (NEA) annually publishes statistics comparing the 50 states and the District of Columbia to one another on various aspects of education in the United States.¹² The reported average teacher salary for the nation was \$47,674 and South Carolina ranked 29th with an average of \$42,189.¹³ One of the issues in *Abbeville* dealt with teacher pay in the rural school districts. Though the state ranking does not indicate the status of teacher pay in the rural school districts, it does indicate that the average South Carolina salary for teachers is below the national average.

South Carolina’s ranking for the number of teachers in public K-12 schools for 2004 – 2005 was 23rd, with 46,167 teachers.¹⁴ In addition, South Carolina ranked 25th in enrollment figures with 680,635 students in public schools.¹⁵ When combined, South Carolina’s student-teacher ratio in public schools ranked 30th with a ratio of 14.7 to 1.¹⁶

The national average on ratios was 15.8 students to 1 teacher. South Carolina, when compared to the rest of the nation, has maintained smaller student to teacher ratios.

The plaintiffs in *Abbeville* argued that South Carolina's General Assembly was not allocating sufficient resources for public schools. According to the NEA data, South Carolina ranks 27th on current expenditure per student in public education with \$8,035, compared to a national average of \$8,661.¹⁷ When compared to the rest of the nation, South Carolina ranked 26th on total revenues for public schools from the state government and 21st on total revenues for public education from local contributions.¹⁸ These rankings indicate that South Carolina is slightly behind the rest of the nation in the amount it spends to educate a child and relies slightly more on local contributions for the total allocation.

On a national level, South Carolina is in the middle on many educational indicators. The state is neither leading the nation in any measurement, nor is it woefully behind the rest of the nation. Rather, South Carolina appears to be average according to educational measurements.

State and County Figures Related to Education

A common perception, mentioned in a number of interviews, regarding education in South Carolina is that the wealthy families of the state send their children to private education. Regardless of the reason for this decision to send a child to private education, the numbers indicate that 7% of the state's entire student population attend private schools.¹⁹ Table 3.3 reports the students in public and non-public education in the eight lead counties.²⁰

Table 3.3: Public and Private Enrollments in Plaintiff Counties²¹

County	Public Enrollment	Private Enrollment	Percent in Private Education	Percent of African Americans and Whites in County (W/AA) ²²
Allendale	1,759	0	0 ²³	27/72
Dillon	6,095	425	7%	50/45
Florence	21,983	2,798	11%	57/40
Hampton	4,095	271	6%	43/55
Jasper	3,102	686	18%	48/50
Lee	2,803	668	19%	36/63
Marion	6,116	514	8%	43/56
Orangeburg	15,079	1,579	9%	35/62
TOTALS	61,032	6,941	10%	NA
State	664,358	41,528	7%	68/29

Table 3.2 illustrates that the non-public enrollment trends in the plaintiff counties (not the school districts since one county could have multiple school districts) tend to exceed the state averages.

The NEA reported that South Carolina's average for current expenditures per student was \$8,035.²⁴ That average is up from the 2002 – 2003 school year, when it was reported at \$7,439 allocated to schools for expenditures per student.²⁵ The counties involved in *Abbeville* reported the following operating expense per student during the 2002 – 2003 school year: Allendale (\$11,499), Dillon (\$6,716), Florence (\$7,101), Hampton (\$7,794), Jasper (\$8,285), Lee (\$8,973), Marion (\$7,584) and Orangeburg (\$8,588).²⁶ The average for the eight counties was \$8,317.50, or over \$900 per student more than the state average. The additional revenues that the eight counties had access to included federal allocations for Title I and other social services to assist poor students.

According to the NEA, teacher salaries in South Carolina ranked 29th in the nation in the 2004 – 2005 school year. In 2002 – 2003, the average salary for the state was \$40,362 and the average for the southeast region of the United States was \$40,806.²⁷ This

last year the average teacher salary rose to \$43,011.²⁸ An argument in the plaintiffs' case was that the plaintiff school districts lacked the resources to recruit and retain highly qualified teachers. Table 3.4 reports the average teacher salary for the eight plaintiff school districts during the 2005 – 2006 school year.

Table 3.4: The Average Teacher Salary for Plaintiff School District, 2005-06

District	Average Teacher Salary
Allendale	\$39,758
Dillon 2	\$40,531
Florence 4	\$40,930
Hampton 2	\$42,936
Jasper	\$40,724
Lee	\$41,950
Marion 7	\$40,250
Orangeburg	\$45,257
Total Average	\$41,542

The plaintiff school districts have an average teacher salary that is almost \$1,500 less than the rest of the state.

Recommendations for Improving Education in South Carolina

Following his election in November 2006, Dr. Jim Rex, the newest state Superintendent, formed a Transition Leadership Team to make recommendations on educational issues. The efforts were divided into five committees: Accelerated Innovation, Accountability, Choice, Fair and Equitable School Funding, and Teaching Profession.²⁹ The five committees presented Dr. Rex with 97 recommendations to improve public education in South Carolina. It is interesting to note the number of recommendations that appear to directly relate to issues from *Abbeville*.

For example, the committee recommended, “teacher salaries in the areas of greatest need must be allowed to rise to the levels necessary to attract great teachers to serve children with the greatest needs.”³⁰ Throughout the *Abbeville* trial the plaintiffs

argued that rural school districts were at a significant disadvantage, when compared to other school districts, when it came to recruitment and retention of good teachers since they could not pay as much as their neighbors. In fact, the next recommendation to Dr. Rex addressed this point as well, “Significant incentives such as retirement benefits, insurance benefits, salary supplements, and/or significant bonuses for length of service and effectiveness should be considered to attract and retain skilled teachers to high-poverty rural areas.”³¹

Another recommendation read, “South Carolina should review and update the base student cost (explained in detail in Chapter Four) to reflect the funding necessary to educate all students...and determine the funding needed about the base student cost to educate a poor child where poverty in the school or district is overwhelming.”³² The implication from this recommendation is that schools and districts with high concentrations of poverty have a greater array of issues to address. And, to address those issues adequately requires additional resources, above the base student cost, or the amount it costs to educate the “average” child. A second recommendation also touched on this issue, “South Carolina should consider designing a system that increases the poverty weighting factor and the aggregation of poverty weighting factors.”³³

Another group of recommendations addresses a core argument to the plaintiffs’ case. “More state capital should be available to upgrade and maintain facilities, infrastructure, and technology in communities where local capital is not available.”³⁴ Two other recommendations recognized rural school districts’ struggle to raise resources for facility upkeep, upgrades, and replacement, and encouraged the state to take a more active lead in ensuring school facilities are adequate.

In all, 20 of the 97 recommendations appear to address issues raised in *Abbeville* and offer solutions. It should be noted that these are recommendations to a state agency that oversees and regulates public education and, currently, has limited role financially supporting public schools.³⁵ Whether or not these recommendations actually became implemented remains to be seen, but at least they are items of discussion within education circles in South Carolina. The recommendations serve to highlight the fact that South Carolina has areas in which it can improve education in public schools for all students.

Politics in South Carolina

Politics in South Carolina, as with any area, could be likened to a pendulum that slowly swings from one side to the other. Over the last 140 years, South Carolina has experienced a radical political change related to voter trends. Once considered a staunch Democratic Party state, South Carolina is now a red state at all three levels (national, state, and local). In this section, the political trends of South Carolina will be reviewed.

Once readmitted to the union following the Civil War, South Carolina, like the rest of the South, identified with the Democrats more than the Republicans.³⁶ Part of this affiliation stemmed from the fact that Abraham Lincoln, whose election in 1860 to the presidency led to the Civil War and who abolished slavery, was a Republican. To illustrate the fact that South Carolinians did not identify with Republicans, from 1876 to 1975 every governor was a Democrat.³⁷ However, from 1975 to present there has been a stronger balance between the two political parties in the state's governor's office. Republicans have been elected governor for 24 of the 36 years (1975 to 2010, when current Governor Mark Sanford's current term ends).³⁸ Even more telling about the

political shift in South Carolina related to the governor's office is the fact that 20 of the last 24 years Republicans have held the top executive office in the state.³⁹

Similar trends are exhibited in South Carolina's General Assembly, or legislative body that consists of a Senate and a House of Representatives. In the Senate, there are 46 elected officials. In 1995, Democrats held a 30 to 16 seat advantage in the Senate.⁴⁰ By 2000, the Republicans had closed the gap to 22 to 24, with Democrats clinging to a two seat majority.⁴¹ Currently, Republicans hold 26 seats and the Democrats have 20.⁴²

The final example that voters in South Carolina are becoming more conservative in their voting trends comes from the presidential returns. In 2004, George W. Bush received 53% of the votes in South Carolina while John Kerry only carried 36%.⁴³ In fact, the last presidential nominee who was a Democrat to carry the state of South Carolina was Jimmy Carter. Prior to Carter, it was John F. Kennedy.⁴⁴

For a long time South Carolina has elected Republican national figures and Democrats as state representatives. However, the current political trends indicate that the South Carolina electorate is becoming more universal in its conservative views. It appears likely that social issues have contributed to this political shift and it is difficult to project the repercussions of this shift on education. One movement that is afoot in South Carolina is vouchers, or the taking of public funds to help offset the tuition costs of a private school. Vouchers are heavily discussed in education circles in South Carolina with Governor Sanford making them a key part of his political platform. In fact, Dr. Rex, the newly elected state superintendent, and his Transition Leadership Team had an entire committee dedicated to issues associated with choice.⁴⁵

South Carolina's economy has traditionally been dependent upon the strength of its agriculture. Cotton remains a major cash crop in the state that directly impacts many of its industries. In this section, South Carolina's economic trends will be reviewed in order to provide a more complete contextual framework.

Economic leaders in the state saw the importance of diversifying South Carolina's economy in the 1920s when disease and erosion significantly hit the cotton industry. The ripple effect of this hit on cotton was felt throughout the state and impacted many of the other industries.⁴⁶ These industries include mining, construction, manufacturing, trade, transportation, and tourism.⁴⁷ This diversified economy has produced a gross state product per capita that ranks 47th in the nation.⁴⁸

The gross state product per capita does not appear favorable for South Carolina. However, it is not the only indicator that South Carolina's economy is not as strong as other states in America. For example, the unemployment rate in South Carolina for January 2007 was 6.6% whereas the national average was 4.6%.⁴⁹ These numbers indicate that South Carolina is weak and there is a higher rate of unemployment in the state than the nation.

There appear to be mixed messages from South Carolina's economy. On the positive side of the economy, the transition from non-durable goods, such as textile, to durable goods, such as automobiles, is well underway. This ensures a more stable economy that is less influenced by factors such as disease or weather. In fact, although manufacturing remains the single largest component of South Carolina's economy, durable goods have doubled its share of the state's economy since in 1977.⁵⁰

On the alarming side of South Carolina's economy is the fact that the services sector employs 26.3% of the state's workforce. This is particularly concerning since these jobs tend to have low wages and can be seasonal or unstable.⁵¹ It is less than ideal for a state to have over a fourth of its economy based on an unstable sector. On a national level, the services industry account for 12.9% of all employment, or less than half of South Carolina's average.⁵²

South Carolina's economy is susceptible to financial highs and lows. In the last two decades the state's economy has suffered two significant dips. The first economic dip occurred in the early 1990s, the time when *Abbeville* was first filed, and the second was in 2000. It naturally follows that as South Carolina's economy struggles, so does the government revenue. The problem with South Carolina's economic set-up is that the government accrues most of its revenues from income and sales taxes. When South Carolina's economy is strong these prove to be two excellent income sources. However, when the economy is sluggish, so are the government's resources. These revenue sources are too responsive to the state's economy.⁵³ In addition, the use of a sales tax is problematic since the tax does not grow with income. Over time, the sales tax generates fewer revenues for the state. As a result, budgets are cut or taxes are increased.⁵⁴

One final point not related to South Carolina's economy centers on the fact that the state's population that is 55 or older was up to 21.4% in 2000.⁵⁵ Not only does an older citizenry favor more fiscally conservative approaches to economy, they also have spending trends that do not favor a government that relies on revenues from sales taxes since health care items are exempt from being taxed.⁵⁶ In addition, an older population is

not traditionally concerned with the state of public education since it has no immediate impact on their livelihood.

South Carolina's economy is not exempt from booms and busts. Efforts have been made over the years to bring more stability to the economy with mixed results. In conclusion, although the durable good sector is growing the services sector is still too large. As a result, South Carolina's government struggles financially due to the instability of the state's economy. When incomes go down as a result of an economic slowdown, income tax revenues decline, as do purchases that impact sales tax revenues. As a result, the state's top two income sources are directly impacted by the health of the state's economy.

Conclusion

For the findings that will be presented in Chapter Four to make better sense to the reader a conceptual framework was needed. This framework provided a brief explanation of the participants to this study. In addition, the framework explained the state of education, politics and economics in South Carolina. These explanations will add to the understanding and meaning of the findings discussed in Chapter Four.

Endnotes

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- ¹ Letter from a South Carolina judge involved in *Abbeville* to Spencer Weiler (November 30, 2006), 1.
- ² *Abbeville County School District, et al., v. The State, et al.* (Abbeville 1999), 335 S.C. 58, 68.
- ³ *Abbeville County School District, et al., v. The State of South Carolina, et al.*, (Abbeville 2005), 93-CP-31-0169, 4.
- ⁴ *Abbeville* 1999, supra note 2.
- ⁵ *Ibid*, 64.
- ⁶ *Richland County v. Campbell*, 294 S.C. 364, 348.
- ⁷ *Richland*, supra note 6; *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1.
- ⁸ *Abbeville* 1999, supra note 2, 67.
- ⁹ *Ibid*, 68.
- ¹⁰ *Abbeville* 2005, supra note 3, 162.
- ¹¹ *Report of the Transition Leadership Team of Jim Rex, State Superintendent of Education*, South Carolina Department of Education (January 2007), 4. Available at: <http://www.ed.sc.gov/agency/superintendent/transcriptteamreport/index.html>. Last viewed March 7, 2007.
- ¹² NEA Research, *Rankings & Estimates: Rankings of the States 2005 and Estimates of School Statistics 2006* (November 2006). Available at: www.nea.org.edstats/RankFull06b.htm. Last viewed March 7, 2007.
- ¹³ *Ibid*, 10.
- ¹⁴ *Ibid*, 12.
- ¹⁵ *Ibid*.
- ¹⁶ *Ibid*, 13. A note should be made here that the lower ranking indicates a lower student to teacher ratio. So, assuming low ratios are desirable, the lower the ranking the better the ratio.
- ¹⁷ *Ibid*, 13.
- ¹⁸ *Ibid*, 17.
- ¹⁹ South Carolina Department of Education, Office of Research, *Number of Schools and Total Enrollment in South Carolina Public and non-Public Schools (1992-93 to 2003-04)*, 1. Available at: <http://www.ors2.state.sc.us/abstract/chapter7/education8.asp>. Last viewed March 2, 2007.
- ²⁰ Within any county in South Carolina could be multiple school districts so these numbers do not reflect the state of the specific plaintiff school districts, just the counties.
- ²¹ South Carolina Department of Education, Office of Research, *Number of Public and Private Schools and Enrollment in Grades K-12 in South Carolina (2003-04)*, 1. Available at: <http://www.ors2.state.sc.us/abstract/chapter7/education9.asp>. Last viewed March 2, 2007.
- ²² South Carolina Population Reports, Office of Research and Statistics, *Population Estimates by Race, July 1, 2005*, 1. Available at: <http://www.ors2.state.sc.us/population/estimates/county6.asp>. Last viewed April 13, 2007.

²³ There are no private schools located within Allendale County. Students who wish to attend private schools must attend schools in neighboring counties. Although students from Allendale County do attend private school outside of the county, along with students who enroll in public schools in neighboring counties, the specific numbers were not available.

²⁴ NEA Research, *supra* note 4, 13.

²⁵ South Carolina Department of Education, Office of Research, *Current Operating Expenditures per Pupil in Average Daily Membership (1998-99 Through 2003-04)*, 1. Available at: <http://www.ors2.state.sc.us/abstract/chapter7/education7.asp>. Last viewed March 2, 2007.

²⁶ *Ibid.*

²⁷ South Carolina Department of Education, Office of Research, *Average Classroom Teacher Salaries in the United States, Southeast, and South Carolina (1992-93 Through 2003-04)*, 1. Available at: <http://www.ors2.state.sc.us/abstract/chapter7/education14.asp>. Last viewed March 2, 2007.

²⁸ South Carolina Department of Education, Office of Research, *Average Salary Summary, Year-end, 2005-06*, 1. This document is in possession of the author, having received it electronically upon request to South Carolina's Department of Education.

²⁹ *Report*, *supra* note 11, 2-3.

³⁰ *Ibid.*, 19.

³¹ *Ibid.*

³² *Ibid.*, 20.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*, 6.

³⁶ South Carolina, *The Columbia Electronic Encyclopedia: 6th Edition* (Columbia University Press, 2007), available at: <http://www.infoplease.com/ce6/us/A0861203.html>. Last viewed March 8, 2007.

³⁷ South Carolina Government (2007), available at: <http://www.sciway.net/hist/governors/>. Last viewed March 7, 2007.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ C. Bruce Littlejohn, *The Re-Arising of the Republican Party in South Carolina*, document available online at: <http://www.sc.edu/library/socar/uscs/2000/littlej.html>. Last viewed March 7, 2007.

⁴¹ *Ibid.*

⁴² South Carolina Government, *supra* note 37, 1.

⁴³ Election Returns, 2004 available at <http://www.rasmussenreports.com>. Last viewed March 7, 2007.

⁴⁴ Interview with Mr. Charlie Chair (pseudonym) on December 8, 2006, 4-5.

⁴⁵ *Report*, *supra* note 11, 2.

⁴⁶ South Carolina's Economic History available at: <http://www.infoplease.com/ce6/us/A0861203.html>. Last viewed March 7, 2007.

⁴⁷ The United States Department of Labor, *South Carolina*. Available at: <http://stats.bls.gov/eag/eag.sc.htm>. Last viewed March 8, 2007.

⁴⁸ Gross State Product Ranking per Capita, available at:
http://en.wikipedia.org/wiki/List_of_U.S._states_by_GDP_per_capita. Last viewed March 8, 2007.

⁴⁹ The Department of Labor, *supra* note 47.

⁵⁰ Donald L. Schunk, *The South Carolina Economy and Government Review* (Strom Thurmond Institute of Government and Public Affairs, Clemson University, November 18, 2005), xi. Available at:
<http://www.strom.clemson.edu/teams/ced/revenue/schunk.pdf>. Last viewed March 8, 2007.

⁵¹ *Ibid*, xii.

⁵² The United States Department of Labor, *Other Services*. Available at:
<http://www.bls.gov/iag/otherservices.htm>. Last viewed March 13, 2007.

⁵³ Schunk, *supra* note 40, x.

⁵⁴ *Ibid*, xiv.

⁵⁵ *Ibid*, xiii.

⁵⁶ *Ibid*.

CHAPTER FOUR: FINDINGS

Introduction

The eighteen qualitative interviews produced over 200 pages of transcriptions. These transcriptions contained a wealth of data related to the five research questions that serve as the focus to this study. Through a process of coding and grouping the interview data according the five research questions, the interviews the data were organized. This organization allowed the data from the transcripts to answer each of the five research questions.

Chapter Four follows a prescribed format to help keep each answer concise and avoid redundancy. Each research question is answered in the order they were presented in Chapter One. Within the answer to each research question the interview data are first summarized by reporting a simple frequency count related to the number of participants who offered a particular answer. After the summary, that the interview data is allowed to provide the reader the rich and descriptive details that can only be obtained through qualitative interviews.

Research Question #1

Historical Introduction: *Briggs v. Elliott*

The lives of African Americans in South Carolina prior to *Brown v. the Board of Education of Topeka, Kansas* (1954) were, for all practical purposes, completely segregated from whites.¹ Beyond the historically documented segregated practices of the South, which included designated seating at the back of buses, “colored only” drinking fountains and public restrooms, and so much more; South Carolina had some unique practices designed at keeping the races separated, unless beneficial to whites. An example

of this point occurred in Charleston, where “police would chase away black women who dared to push their own children in strollers or carriages around Colonial Lake, but they were allowed to push the white children for whom they served as nannies.”² However, in the 1930s, a major national effort surfaced that took aim at attacking, through litigations, the “separate but equal” justification for segregation. The National Association for the Advancement of Colored People’s (NAACP) Legal Defense orchestrated these efforts.³

The culmination of the NAACP’s efforts resulted in the *Brown* case, which actually consisted of five different companion cases from Kansas (*Brown et al. v. Board of Education*), South Carolina (*Briggs v. Elliott*), Virginia (*Davis v. Prince Edward County*), Delaware (*Gebhart v. Belton*) and the District of Columbia (*Bolling v. Sharpe*).⁴ The *Briggs* case began when Reverend Joseph DeLaine, who also served as a school principal, requested the school district of Clarendon County to supply a school bus for the African American students. He was told that the black citizens of the county did not pay enough taxes to pay for a bus and that it would not be fair to ask the white citizens to cover this expense for the black students.⁵ DeLaine then sought financial assistance from the state, but received a similar negative response.

A group of African American parents pooled their resources and purchased a used school bus, but were unable to maintain the aged vehicle. As a result, DeLaine sought parents who were willing to file a lawsuit against the school district⁶ and eventually 20 black citizens signed the petition, led by Harry and Eliza Briggs.⁷ The economic repercussions for signing the petition included both Briggs losing their jobs. Nevertheless, the case was filed.⁸

By 1952, the *Briggs* case, after originating in Manning, South Carolina, was the first of the companion cases to reach the United States Supreme Court on appeal.⁹ Once the other four were also appealed to the Supreme Court, it was decided to combine them all together into a class action lawsuit and place *Brown* before *Briggs*, “so that the nation would not see the case as just a Southern case.”¹⁰

Fifty years later, in the same courthouse in Manning, South Carolina, another case addressing school issues, known as *Abbeville v. the State*, began. Ironically, many of the “*Briggs*’ children”,¹¹ or the children who benefited from their parents risking everything to ensure they had a bus to ride to school, returned to Manning to commemorate the anniversary of the *Briggs* case, as well as *Brown*. The *Briggs*’ children, now in their sixties, attended the *Abbeville* trial, and, as the case progressed, at least one of them stated to a plaintiff attorney, “we thought we fought this battle 50 years ago.”¹²

Introduction

The *Briggs* and *Abbeville* cases share a number of commonalities, including the fact that both were tried in the same South Carolina courthouse. While much has been written about the landmark *Briggs* decision, *Abbeville* has just been adjudicated and, as a result, has not been as thoroughly analyzed or discussed. The answers to the five research questions guiding this study will begin the analysis process related to *Abbeville*.

Presented in this section are the data related to first research question, which reads, “What political and economic conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit?” The answer to that question will be divided into a number of sections. First, the answers from the interviews will be quantified and summarized. That will be followed by a detailed discussion related to the

evolution of school finance in South Carolina leading up to 1993, the year the lawsuit was filed. Finally, a number of specific points raised in the interview will be examined to help generate greater understanding of the *Abbeville* case.

Summary of the Interview Data

The answers related to the first research question will be quantified and summarized. The top four answers identified by the participants are detailed below along with the percentage of participants to offer each answer. The percentages are also reported for the number of respondents in each of the three subgroups.

The most identified answer in the interviews concerning the economic and political conditions present centered on the state requiring the local school districts to shoulder a greater portion of the school budget without making any allowances for a local school district's ability to pay. There were ten participants who made reference to this answer, with eight of them siding with the plaintiffs, one siding with the defense, and one undecided or unclear.

Another possible explanation for the timing of the lawsuit mentioned by nine participants felt a national trend related to school finance cases influenced the decision to file. Of these nine to provide this answer, three sided with the plaintiffs, three sided with the defense, and three were either undecided or unclear.

Nine participants also said the lawsuit was filed because the rural school districts felt the state was not meeting its constitutional obligation concerning the funding provided to these school districts. Of the nine to state this reason, four sided with the plaintiffs, two with the defense and three were either undecided or unclear.

Finally, five of the eighteen participants identified the increase in data awareness in the early 1990s as contributing to the decision to sue the state. Of these five participants, four sided with the plaintiffs and one with the defense.

Though these summaries help begin to answer the first research question, these numbers fail to capture the rich data obtained through qualitative interviews. If anything, these summaries leave one longing for more detail.

Conditions: Legislation Related to Education

Reviewed in this section are the different efforts made by the state to fund public education prior to the lawsuit being filed in 1993. Multiple data sources are used to discuss the various efforts to fund education, including primary sources, scholarly works, and passages from the interviews.

South Carolina relies on a combination of federal, state, and local revenues to cover all of the expenses associated with education.¹³ The local school districts generate 87% of their revenues from property tax assessments, with much of the local money going towards operation and maintenance expenses.¹⁴ Conversely, the state generates almost all of its money for public education from sales tax revenues.¹⁵ The use of sales tax revenues to pay for education began in 1951 when South Carolina leaders were seeking methods to preserve segregated schools by upgrading the quality of public schools provided to African Americans so that it would be argued that “equal services” were offered to both sides.¹⁶

In the 1970s, South Carolina recognized the disparities the state funding formula created, due to the fluctuation in local property tax revenues, and took steps to create a system of education that ensured every child had the opportunity to learn.¹⁷ These efforts

resulted in a progressive piece of legislation known as the South Carolina Education Finance Act of 1977 (EFA).¹⁸ Ironically, this progressive legislation may have led to the filing of the *Abbeville* lawsuit. In discussing the EFA, Red said, “[the EFA] specifically excluded buildings, transportation and benefits...because the state was currently funding them at 100%. There was no need to include them in the EFA.”¹⁹

How could a progressive piece of legislation, that placed South Carolina ahead of the nation in developing an equalizing formula in the 1970s, eventually lead to a school finance lawsuit? The answer to that question requires a closer examination of the legislation and subsequent actions by the General Assembly. The goal of the EFA was to guarantee “the availability of at least minimal educational programs and services” to all students in the state.²⁰ The EFA created an “index of taxpaying ability” that measured a local school district’s ability to pay for education compared to the other school districts in the state.²¹ In other words, the EFA took into consideration a local school district’s ability to generate revenues and provided additional funds to those school districts that were judged to possess less fiscal ability.

The EFA effectively created an equalization formula.²² This equalizing formula affected every aspect of education in 1977 except for pupil transportation, capital outlay, debt service, pilot programs, adult education, textbooks, food service programs, employee benefits, and any component of education that was not in effect at the time.²³ As was mentioned above, pupil transportation and employee benefits were excluded from the EFA’s equalizing formula because the state covered all these expenses, but there was no guarantee that the state would continue to assume 100% of these costs. In addition, anything added to education after 1977, for example technology, advanced placement

courses, or end-of-year testing, was not distributed through the EFA equalization formula.

In 1984 the General Assembly sensed additional funds were needed in education in order to improve its output. The new piece of legislation, called the Education Improvement Act of 1984 (EIA), increased the sales tax in the state by one cent,²⁴ which generated an additional \$210,000,000 for education in its first year of operation.²⁵ The additional state appropriation was earmarked for 25 specific programs aimed at improving education within South Carolina.²⁶ These programs sought to raise student performance, increase the quality of teaching, provide stronger leadership for schools and school districts, and reward productivity.²⁷ Most significant to this discussion, the EIA did not employ an equalization formula like the EFA; rather funds were distributed to school districts on a per student basis.

According to Purple, the push for the lawsuit “began in 1984 when they passed the Education Improvement Act. The general operating is done on a formula that takes into account poverty (referring to the EFA equalization formula) but the Education Improvement Act is not. It is just straight dollars.”²⁸ The EIA did assume most of the responsibility for funding educational programs that were financed through the Act, using a 70/30 distribution where the state would pay for 70% of the program and the local school district had to pay the remaining 30%.²⁹ At this point education leaders from the rural school districts throughout the state began to voice their concern related to the EIA arguing that it was difficult for them to produce the required 30%. However, according to seven different interviewees, their complaints went mostly unheard by the General Assembly.

South Carolina is divided into different regions. One of these regions is called Pee Dee, named after the Pee Dee River.³⁰ The Pee Dee consists of eight counties and eighteen school districts.³¹ The Pee Dee school districts established an Education Center, located in Florence, and the superintendents from the eighteen school districts would meet monthly to discuss issues related to education.³² The Pee Dee Education Center proved eventually to be the impetus for the lawsuit, as described below.

In the early 1990s, the state of South Carolina decided that they could no longer fund pupil transportation and employee benefits, referred to as fringe benefits in several interviews, at 100%. The state implemented a requirement that forced the local school districts to pay 30% of these expenses, thus freeing up state dollars for other programs. Pine, a superintendent from the Pee Dee area, described the impact the state had on the rural school districts, "...the state used to pay all of the health benefits. Gradually, they started to send more and more [of the costs] to the local districts and it got [to be] overwhelming."³³

The problem with asking the local school districts to pay for 30% of the fringe benefits and pupil transportation was best explained by another superintendent from the Pee Dee area. Maple said, "The difference with the fringe benefits was [the state] made no allowances for the district's ability to pay, and that was a problem for the small, rural school districts."³⁴ In fact, in the Pee Dee Education Center, the costs associated with fringe benefits and pupil transportation were hypothetically run through the EFA's equalizing formula and "for virtually every district in [the Pee Dee area] it was a large savings."³⁵

The superintendents attempted to voice their concerns to the General Assembly, but these efforts produced limited results. Two former superintendents from the Pee Dee area who had remained actively involved in education at the time were able finally to negotiate an agreement “where the General Assembly set aside eight million dollars of what they called hold harmless funds, that would be used to help the poorer districts in the Pee Dee deal with the rising costs of the fringe benefits.”³⁶ The problem with this solution is that it only helped the less fiscally able school districts and it was only available for one year. Pine described the situation as financially difficult, “especially on the rural, small schools. The state just kept cutting back and cutting back. We kept talking with our legislators, and we talked in Columbia. We got the run-around. One year passed. Two years passed and it just kept going on.”³⁷

As the General Assembly gave the rural school superintendents, especially those located in the Pee Dee area “the run-around,” they began to consider other options, including the possibility of filing a lawsuit, to ensure the students in their school districts had the necessary educational opportunities. One participant recalled a conversation about “an equity lawsuit” with this group in the early 1990s³⁸ and Maple³⁹ described what transpired:

“On August 12, 1993, the Pee Dee superintendents met to take formal action. Prior to the vote, [two superintendents] indicated that the Pee Dee legislators had said they could give the Pee Dee districts no help. A lawsuit was seen as the only way to get relief.

[One] superintendent of Dillon School District 3, moved that the Pee Dee Education Center ‘proceed with other interested parties, including the State

Department of Education, the South Carolina School Administrators Association, and the South Carolina School Board Association, to formulate a plan for achieving equity funding and that plans be made to obtain a court injunction to prevent the legislature from reducing the \$8 million hold-harmless equity funds at the same time.’ [The] superintendent of Marlboro County Schools seconded the motion, which passed unanimously.”⁴⁰

Seventeen of the eighteen school districts from the Pee Dee area joined the lawsuit.

The next step taken in the lawsuit involved inviting all the school districts throughout the state to join the effort.⁴¹ A letter was sent to all of the school districts explaining the reason for filing the lawsuit, citing the increased costs associated with fringe benefits, the fact that rural school districts were taxing at a higher rate than wealthier school districts but generating less funds, and the fact that the General Assembly was unlikely to address these issues without a court order.⁴² In a very telling statement, the letter closed with the following statement, “We regret having to take the time and money to pursue a judicial remedy. However, for our children’s sake, we cannot do less.”⁴³ As a result of the letter, an additional 23 school districts joined the lawsuit, bringing the total number of districts involved to 40.⁴⁴

A thought provoking observation by Black, a defense attorney in the lawsuit, was, “I can say this, that we observed many times that it would have been interesting to try this case in 1993.”⁴⁵ One possible implication of this statement is that the plaintiffs had a strong case in 1993 based on the fact that the EIA did not take into consideration a school district’s ability to pay. It does become apparent that the EFA and EIA created a condition in the state of South Carolina that led to the decision to file the lawsuit.

Conditions: South Carolina's Political Climate

In addition to comments on the impact legislation had on the decision to file the lawsuit, three participants referred to the political climate of the state as influencing that decision. Four of the political factors that were perceived to influence the decision to file *Abbeville* will be detailed in this section.

1. Political support for education.

According to Desk, former Governor of South Carolina, "Public education leaders agreed that more needed to be done to help improve education in those districts and for all children around the state."⁴⁶ There was support for a lawsuit that questioned the state's funding practices among public school leaders. This support was manifested in the fact that 47% of the school districts throughout the state comprised the original lawsuit.⁴⁷

A concern voiced by the school districts that did not join the lawsuit was commonly referred to as the "Robin Hood Effect", or the taking of revenues from the wealthier school districts to help poorer school districts.⁴⁸ The wealthier areas of the state wanted to be sure that this lawsuit was not going to take money out of their hands. A former Pee Dee superintendent who was instrumental in the lawsuit's beginnings attempted to put those concerns to rest early on when he stated at a South Carolina School Board Association meeting, "it is [the hope of the plaintiff school districts] that the legislature will address the issue by providing additional funds to improve the quality of education statewide. How it decides to fund, however, is largely beyond the plaintiffs' control even if the suit is successful."⁴⁹

2. Political climate.

In addition to the support for *Abbeville*, the political climate in the state appeared to be more favorable to the lawsuit. According to Ottoman, at the time the lawsuit was filed, “people felt the political climate was a little more tolerant than it is now.”⁵⁰ The South Carolina Democrats controlled the House of Representatives and tended to be more responsive to educational issues. In addition, the rural areas had greater political power in 1993 than they enjoy today, although it was still limited when the lawsuit was filed.

3. Rural versus urban composition.

Another political factor that appeared to influence the decision to file *Abbeville* in 1993 stemmed from the composition of the lawsuit. South Carolina has a history of race issues that tend to polarize the populous. “I think the timing was right because when you talk about rural versus urban, that, hopefully, on the face of it, transcends race, gender, and socio-economics.”⁵¹ Ottoman felt the lawsuit was presented so that it avoided a black versus white confrontation. This is significant for South Carolina where the African American student population comprises 41% of the total public education population statewide, while the plaintiffs’ lead school districts averaged 88% minority student population.⁵² *Abbeville* could have easily been seen as a case dealing with race due to the racial composition of the lead school districts, but it was not. As a result, the rural versus urban composition provided the lawsuit with a greater degree of mass appeal politically.

4. Lack of political influence.

The final political factor that may have influenced the filing of the lawsuit was the fact that a vast majority of the plaintiff school districts were located in rural areas of the state. Individually, these school districts had very little political power. Multiple factors

influenced the lack of power for these rural school districts. They lacked the population base that is a prerequisite for political influence. Several small districts were regularly located within one sparsely populated county. The net effect of these smaller school districts is that they had to share what little political power they had with other school districts. A former Pee Dee superintendent described the impact of this lack of political power by saying, “[W]e were talking to our representatives and they were saying they could not do anything about [the problems associated with the costs of the fringe benefits]. We told them we were going to sue and they said we probably ought to because they could not help.”⁵³ Juniper observed, “What made the lawsuit strong is that it united a number of individually weak areas into one voice that had some clout. People had to listen to us.”⁵⁴ It appeared that the lawsuit gained some momentum based on how it was perceived by policymakers.

Politically speaking, there were many factors that appeared to influence the decision to file the lawsuit in 1993. These factors included the realization among educators that there was a problem that needed to be addressed, the influence the democrats had in the state at the time, the composition of the lawsuit, and the fact that the lawsuit united many small and powerless school districts into one voice that the state had to hear.

Conditions: State Inaction

Another possible condition that existed prior to *Abbeville* being filed in 1993 that was identified during the interviews centered on the perceived lack of action by the General Assembly. Several of the interviewees indicated that they believed that the General Assembly was not following the South Carolina Constitution regarding the

provision to maintain "...and support of a system of free public schools open to all children in the State."⁵⁵ What was happening prior to the lawsuit being filed? The answer to that question will be presented in this section by exploring the possible influence the state's action, or inaction, had on the lawsuit being filed.

Table observed, "When you look at some schools in South Carolina they are clearly behind others in the state. We have been asking the question, 'What can be done?'"⁵⁶ There is an achievement gap between students and school districts in South Carolina. In addition to asking what could be done, some wondered why this gap existed in the first place. Two participants placed blame for the achievement gap on the state for its failure to fund public schools appropriately. Table stated, "I think it is pretty clear that the state is not fulfilling its constitutional obligations"⁵⁷ and Rabbit said, "South Carolina had not given the appropriate attention to the questions of maintenance and improvement of...education."⁵⁸ These statements seem to imply that there was an impression that the General Assembly was not fulfilling its obligations related to public schools in the early 1990s.

Red explained the impact the financial inattention had on the rural school districts in South Carolina when she said, "school districts have a huge job to do and meager resources to do it with."⁵⁹ She indicated that when the General Assembly fails to fund public schools adequately, the rural school districts particularly struggle because their students come with additional demands. Spruce explained the situation by stating, "It takes more to educate a poor child. That is the bottom line. We spend so much more on educating a poor child... These children do not have access to live theater and experience few field trips. They learn best through the use of hands-on experiences and the teacher is

typically it for our students.”⁶⁰ Or, teachers in rural settings prove to be the sole source of formal teaching for poor children. Examples of additional expenses accrued while working with poor children include after-school tutoring and extended school year services to compensate for the lack of intellectual stimulation in the homes. However, the needs of the family also include basic health care, employment training, adult literacy, and clothing.⁶¹

As was mentioned previously, two former superintendents negotiated an agreement with the General Assembly that produced an additional eight million dollars to assist the schools in the Pee Dee area with their costs for fringe benefits.⁶² Many education leaders believed that General Assembly broke an agreement when it decided to limit the relief funds to one year.⁶³ Rural school superintendents and other education leaders believed that the agreement obligated the General Assembly to annually appropriate funds for this purpose. This misunderstanding, or broken agreement, resulted in “complete frustration” and a realization that the rural school districts had “lost much of its political power.”⁶⁴ Red described the beginning of this growing frustration by saying, “[The school districts] were not only not getting the support they needed, they were being given more problems to deal with by the legislature. So, they banded together and decided to do something.”⁶⁵ That “something” was to file the lawsuit.

Each participant was asked, “Why did the school districts decided to file the lawsuit as opposed to working with the General Assembly to improve education?”⁶⁶ Ottoman stated “...the school districts had been trying, to no avail, to get the General Assembly to do the right thing and provide adequate funding for the system.”⁶⁷ Pine described the need for the lawsuit, “...all avenues of negotiation had completely broken

down. We saw that there was not going to be any concessions to amount to anything... Unless they were mandated by the courts we had just about exhausted all avenues.”⁶⁸

The education leaders associated with the plaintiffs indicated that working with the General Assembly was not going to produce the desired results. The general sentiment was the state was inattentive to the plight of the rural school districts, and the only solution left was to file a lawsuit. They hoped that a lawsuit would provide the necessary court mandate for the General Assembly to address the specific concerns of the rural school districts.

Conditions: Funding Issues

The perceived lack of action by the General Assembly created a funding issue, according to some of the participants. Alleged inadequate state funding resided at the heart of the original complaint and further alleged that the state was not providing adequate funds for the rural school districts serving many children of poverty. The funding issues are explored in greater detail in the following section.

According to Juniper, the funding issues stemmed from the fact that South Carolina “never decided how much it would cost to educate a child.”⁶⁹ The EFA requires the General Assembly to create a “base student cost.”⁷⁰ The base student cost is the amount of money it requires to educate the average, or typical, student.⁷¹ According to one superintendent, the state takes the money available for education and divides it by the number of students in the system to determine the base student cost.⁷² As a result, the base student cost fluctuates from year to year based on the state’s available revenues. The state’s failure to quantify the actual cost of educating a child places a burden on the rural and other property-poor school districts. The school districts face the responsibility of

generating additional resources from inadequate tax bases whenever the amount from the General Assembly fails to appropriate sufficient funds. Pine offered this observation regarding the difficulty of generating additional resources from the poor, rural communities in South Carolina, "...you cannot get blood from a turnip."⁷³

In agreement, Chair said, "The state was not doing its part to fund these rural school districts."⁷⁴ This general sense that the state was neglecting the rural school districts centered on their unique needs. Rural school districts work with a greater proportion of children of poverty and these students, according to most research, require additional services to be successful in school.⁷⁵ Interestingly, the EFA provided additional weighting, above the base student cost, for grade level, special education, and vocational training, but the funding formula did not recognize the additional needs associated with educating poor children.⁷⁶ Although the EFA used an equalization formula to provide additional assistance for poor school districts, it did not recognize the additional costs associated with educating a poor child by providing additional weights for this classification.

Related to this point is that the EFA is "out of date" and "needs to be redone."⁷⁷ Red indicated that the EFA was written in 1977 and has not been updated. The funding formula was progressive initially, but has become less equitable over time. Additionally, the EFA has not responded well to changes in educational demands and policy. For example, although technology is an indispensable component of public schools, the EFA makes no provision for additional state funds.

Instead of updating or modifying the EFA, the General Assembly passed the EIA in 1984. The problem, according to Table, is that "the legislature added

programs...where the funding levels were not funded through the district's ability to pay, but to the number of teachers, so that those dollars, in some ways, off set the impact of the EFA."⁷⁸ The EIA was effectively negating the equalization formula of the EFA. According to Purple, "the funding actually got skewed. It began when they passed the Education Improvement Act. The general operating [costs are] done on a formula that takes into account [the local taxpaying ability] but the Education Improvement Act [does] not."⁷⁹

To make matter worse, the General Assembly began to further under fund the EFA by funding a program initially through the EIA, "then move it [without increasing the state's appropriation] to the general fund."⁸⁰ In the end, the state-aid programs, by 1993, were littered with under-funded, or unfunded, mandates and the school districts were expected to make up the differences.⁸¹ Ironically, according to Mirror, if South Carolina had used the equalization formula to distribute the funds appropriated for the EIA, the rural school districts "would have felt the suit was not necessary."⁸²

Obviously, the perceived inadequate state funding of public schools was at the heart of the decision to sue South Carolina. A question many educators must have been asking themselves related to the funding issue was articulated by Rabbit, "How many people do we lose? How many kids are now in the jails of South Carolina that we have lost because"⁸³ they did not have the educational opportunities necessary? Several interviewees mentioned that money was not the solution, but that it would help pay for the programs that would help poor children succeed in school, or ensure they had the opportunity to succeed.

Conditions: Data

In the 1990s, states across the nation began to collect more data to better assess the effectiveness of public education, and the availability of these data might have contributed to the decision to file the lawsuit in 1993. Although only four people mentioned the influence of the additional data, two worked in South Carolina's Department of Education, one served as a local district superintendent, and one was appointed as the education advisor to the Governor. The role these additional data collection played in affecting the decision to sue the state will be discussed in this section.

According to Purple, the data collected by the state of South Carolina served to highlight a “tremendous achievement gap in students of poverty and most of these school districts were still largely minority school districts.”⁸⁴ These sentiments were echoed by Mirror, who observed, “You can look at the academic achievement of those students in those counties and find that students lag. The achievement gap is broad.”⁸⁵ These data collected by the state served to illustrate that the rural school districts were struggling to keep pace academically with the suburban and urban school districts in South Carolina.

What did the state do with these data? According to Table, “There was an increase on documenting student achievement. Just the data we were collecting at the time. We were beginning to ask the question ‘How are students doing?’, and not just how our football team did on the field.”⁸⁶ In other words, the state began to ask certain questions, like who is learning, and who is not learning? Unfortunately, it appears the problems that surfaced in the early 1990s as a result of data collection still exist. For example, the percent of students to score proficient or advanced on the Palmetto Achievement Challenge Test (PACT) in 2003 – 2004 for white students was 47.5% in

English and 46.6% in math. For African American students, the rates were exceptionally lower, 21.1% in English and 17.0% in math.⁸⁷ Table 4.1 illustrates the performance of the 36 plaintiff school districts on the 2003 – 2004 PACT test, according to the district’s absolute rating. By way of reminder, the number of plaintiff school districts was reduced from 40 to 36 through school district consolidation and one district opting out of the lawsuit.

Table 4.1: Comparing Plaintiff School Districts to State on PACT⁸⁸

District Absolute Rating	Statewide: Number of Districts	Plaintiffs’ Districts	Percent of Plaintiffs’ Districts to the State
Excellent	9	1	11
Good	37	9	24
Average	26	16	62
Below Average	12	9	75
Unsatisfactory	1	1	100

It appears the data from the 2003 – 2004 school year continues to identify the substantial achievement gap between the plaintiff school districts and the rest of the state.

The 1990s also saw a greater emphasis on student performance as measured by end-of-year testing, grading school districts, and the federal No Child Left Behind Act.⁸⁹ South Carolina, like other states, provided its instructional professionals with training related to the new landscape of public education. Purple conducted some of these training sessions and made the following observation:

“With the implementation of the Accountability Act in 1998 and then the passage of No Child Left Behind (in 2002), I went and made a few presentations in some districts. And what I was most struck by...is that [the teachers from the rural school districts] already had almost given up because they knew that they were so

far behind and they had so many needs that were not being met, that there was no way that they could ramp up to these higher standards.”⁹⁰

According to the interviewees, these data documented the achievement gap that existed in South Carolina. This heightened awareness likely contributed to the filing of the lawsuit in 1993 since it proved that the students in the plaintiff school districts were not able to perform as well on the PACT as students in other school districts across the state.

Condition: National Trend

As reported above, one-half of those interviewed referred to a national trend dealing with school finance lawsuits as a factor influencing the decision to file *Abbeville*. Were people in South Carolina aware of other suits across the nation and their results? If so, did this knowledge play a role in leading to *Abbeville* being filed? The answers to these questions will be presented in this section.

According to Rabbit, “The issue was ripe... I did read the newspaper and I knew that in other areas of the country there was a general movement to promote the idea that states had an obligation to support public education.”⁹¹ This national trend, real or perceived, only influenced the decision to file because there was a problem in South Carolina, or the state was “ripe” for a lawsuit. The implication from this comment is that the lawsuit would not have been filed if the educational leaders did not feel there was a problem, regardless of the national trend.

Black divided the various school finance suits filed prior to *Abbeville* into one of two categories: equity and adequacy, or “substantive claim”⁹² cases. It is interesting to note that this defense attorney felt *Abbeville* was an adequacy case, but “I do not think

that is what they had on their minds back in 1993.”⁹³ Of those who mentioned this national trend as a possible reason for the lawsuit, three argued that the plaintiffs were winning these lawsuits across the nation, and the prospects of a victory spurred the lawsuit forward in South Carolina.⁹⁴

These comments raised two additional questions: Was there a national trend? And, were the plaintiffs winning these lawsuits? According to multiple sources, there were lawsuits addressing school finance issues in thirteen different states that were ruled on between 1989 and 1993.⁹⁵ Those contending their state funding formulae were unconstitutional won nine of the thirteen cases, or 70% of the time. In addition, over this five-year period, one fourth of the 50 states had a case reach some degree of resolution. Based on these numbers it seems reasonable to conclude there was a national trend related to school finance lawsuits. Not only was there a trend, those questioning the state’s practices were winning most of the cases. As Desk said, “...people begin to get frustrated and think, ‘Look, the public policy route gives me very few options to achieve my goals, why don’t I try the route that the others have tried? Let’s go to the courts.’”⁹⁶

The frequency and success of school finance cases by other states likely contributed to the decision to file the *Abbeville* lawsuit in 1993. Especially when coupled with other factors, such as the lack of political power enjoyed by the rural school districts and the apparent inattention by the General Assembly to the challenges faced by the rural school districts, it seems reasonable to conclude the national trend had some impact on the decision to file the lawsuit.

Conclusion

What political and economic conditions were present in South Carolina and nationally in the early 1990s that led to the decision to file the lawsuit? The possible conditions range from additional data availability, inaction by the General Assembly, and a nationwide sense trend of similar lawsuits. In the end, no one condition proved to be the reason the *Abbeville* lawsuit was filed. Rather, the impetus for the suit is to be found in some combination of conditions.

The disturbing fact of this case is that the changes that do come about as a result of the lawsuit are coming “too slowly for all these kids.”⁹⁷ Lost in a discussion related to the conditions that led to the lawsuit being filed in 1993 is that this case deals primarily with students who are struggling academically. This led Table to ask, “What are we going to do to make sure we do not have two South Carolinas?”⁹⁸

As was mentioned earlier, the *Abbeville* case took place in the same courthouse as *Briggs* some 50 years after *Briggs* was adjudicated. The *Briggs* case focused on the rights of minority students and ultimately helped reverse the “separate but equal” precedence. *Abbeville*, on the other hand, is focused on the ensuring adequate educational opportunities for South Carolina’s public school children. At first, the two cases seem quite different. However, as Pine posed the question, “Really, have we come very far in the last 50 years or are we fighting the same battle they fought back then?”⁹⁹

Research Question #2

Historical Introduction: The Pee Dee

In Northeastern South Carolina the Pee Dee River flows through several counties and school districts.¹⁰⁰ The river is more accurately referred to as the Great Pee Dee since one of its tributaries is called the Little Pee Dee.¹⁰¹ The Pee Dee River covers 197 miles

and has played a significant role in the economic development of this section of South Carolina.¹⁰²

When European settlers first came to the area, with the Spanish arriving in the 1540s and the English in the 1730s, the river proved to be an effective highway into the backcountry.¹⁰³ As a result, the English settlers, in particular, quickly spread out and began to work the land. The first cash crop of the region proved to be rice due to the ideal swampy conditions of the land near the waterway.¹⁰⁴ The rice industry, along with its successors, has always required a cheap labor force in order to be profitable. Consequently, Africans were enslaved, taken from their homes, brought to South Carolina, and forced to work in the fields.¹⁰⁵ Eventually, rice gave way to timber, which then gave way to cotton.¹⁰⁶ Through each one of these significant economic shifts the region demonstrated the ability to adjust and adapt.

Throughout these changes, the one constant was the Pee Dee river, which “discharges about fifteen thousand cubic feet of water per second into” the Atlantic Ocean.¹⁰⁷ However, the Pee Dee River could not withstand the changes brought on by technology. Steamboats were king of the river and the only way to get products from the fields to the markets, until railroad and the automobile came along.¹⁰⁸

The Pee Dee River derived its name from a tribe of Native Americans indigenous to the area when the first Europeans arrived.¹⁰⁹ Though there is not clear consensus regarding the specific boundaries occupied by the Pee Dee tribe, the region encompasses roughly one third of the state.¹¹⁰ Regardless of the size of the region, there currently is a lack of economic opportunity within the Pee Dee, and, as a result, the Pee Dee counties

struggle with significant poverty issues. Table 4.2 illustrates that the Pee Dee counties exceed the state averages in all poverty measurements.

Table 4.2: Contrasting Pee Dee to the State on Poverty Measurements¹¹¹

Poverty Indicators	State Percentage	Pee Dee Percentage
Below Poverty Level	14.1	22.3
Female Head of Household	21.2	29.7
Less than a 9 th Grade Education	8.3	12.8

Other examples illustrating the degree of poverty found in the Pee Dee region of South Carolina in 2002 include 1,450 homes without plumbing, 1,127 homes without kitchens, and over 10,000 homes without phones.¹¹² The degree of poverty led Orange to comment, “I am a native of West Virginia and I have seen poverty, but I have never seen anything like this. Some of it is beyond a person’s imagination.”¹¹³

Amid all of this poverty, citizens from the Pee Dee area relied on public education. Just like the river during the early economic development of the region, schools not only offered hope to the next generation, they provided the communities with a source of pride. However, with the perceived inaction by the General Assembly, the citizens of the Pee Dee area faced another challenge that could prove to be more devastating than the railroad and automobile were to the economics of the area. If the public schools were under funded by the state not only would the students receive an inferior education, the Pee Dee area, as well as other similar regions of the state, would be relegated to economic difficulties.

Introduction

When first filed in 1993, *Abbeville* had 40 school districts listed as plaintiffs. Over the next two years, that number was reduced to 36 due to district consolidation and the withdrawal of one school district from the lawsuit.¹¹⁴ By the time the case actually

went to trial in 2004, the plaintiffs' attorneys had selected eight lead school districts to represent the case. The aim of this section is to present the interview data related to the second research question, which reads, "How were the eight lead school districts selected to be a part of the plaintiffs' case?" A complete answer to that question requires specific steps to be taken. The first step will be to quantify the interview data. From there the discussion will turn to a greater exploration of the most common answers in an effort to answer the second research question.

Summary of Interview Data

As is the case with each of the five research questions, the participants' responses to the second research question varied and offered valuable insight. Summarized are the most referenced answers related this research question in order to provide a gestalt understanding that will guide the subsequent discussion.

Twelve of the eighteen participants of this study suggested that the eight lead school districts were selected because they best represented the legal arguments the attorneys wanted to make before the trial judge. Ten of the eleven participants who sided with the plaintiffs provided this answer. In addition, one person who sided with the defense and one participant who was either unclear or undecided also offered this answer. In all, a majority of the participants recognized an effort by the plaintiffs' attorneys to select the school districts that proved the best fit for arguing their case.

The next most common answer offered by the participants was that the case, with 36 school districts, was too large to be tried. The contention was that the trial would take too long with so many plaintiff school districts, and action needed to be taken to reduce the number to a manageable level. In addition, some participants suggested that the

state's attorneys would use the size of the case to delay the resolution by deposing representatives from all 36 school districts. Only four participants made reference to this answer, with three of the four siding with the plaintiffs and the other siding with the defense.

Less than three people offered the remaining explanations concerning the selection process for the eight lead school districts, thus making them difficult to adequately summarize. One final point that deserves mentioning in this section was an indirect answer related to this research question. Three of the four interviewed superintendents of plaintiff school districts at the time the case went to trial indicated that it was difficult to be a lead school district. This point will be explored in greater detail below.

These summaries of the participants' responses offer a broad view of their answers, however they fail to address the specifics related to the decision to select the eight lead school districts. In addition, the participants' answers are too intricate to be adequately summarized by a number.

Reduction: Size

On August 12, 1993, a group of seventeen superintendents voted unanimously to pursue a lawsuit against South Carolina over perceived inequities in the state's funding formula.¹¹⁵ After this vote, each of the superintendents approached his or her respective school board to obtain authorization to allocate the necessary funds for the lawsuit. From that point, a letter was sent to the roughly 70 school districts outside of the Pee Dee area that invited them to join the lawsuit.¹¹⁶ As a result of the letter, another 22 school districts joined the original school districts to create 40 plaintiff school districts. Between 1993,

the year the case was filed, and 1996, the year the case actually went to trial for the first time, the actual number of school districts was reduced from 40 to 36.¹¹⁷

The school districts that constituted the plaintiffs mostly consisted of the poor and rural areas of South Carolina. In fact, there was no representation of school districts from the major political and population centers of the state.¹¹⁸ The urban school districts also dealt with many of the same issues related to poverty as the plaintiff school districts, so why did they choose to not join the case? Rocker provided the following explanation as to why her high poverty urban school district did not align themselves with the rural school districts in the lawsuit, "...when we talk about wealthy school districts most people think of it in terms of the students' wealth, or the wealth of the students' families as opposed to the district's fiscal capacity, or its ability to generate income."¹¹⁹ In other words, the lawsuit did not appeal to the urban school districts in South Carolina because they faced a different array of issues. The urban school districts had an adequate tax base due to industry that could sufficiently generate revenues for schools.

Orange recalled a conversation with one of the lead plaintiff attorneys where the attorney "...phoned me and told me that they were moving [the number of school districts] because of the immensity of [the case]."¹²⁰ The case was too big with 36 school districts, and, by selecting eight lead school districts, the plaintiffs' case would become, "more manageable."¹²¹

The decision to reduce the number of school districts to eight may have been necessary as a result of a state tactic. According to Maple, a former Pee Dee school district superintendent, "the state wanted to depose all the principals and all the superintendents in all 36 school districts. And the case was delayed a number of times

because they had to get all of these depositions done. So, at this point, [the plaintiffs' attorneys]...petitioned the judge to allow them to reduce the number of school districts to eight."¹²² Maple also contended that the defense opposed the motion by the plaintiffs because "they were stonewalling the whole time."¹²³

Another possible reason that the school districts were reduced to eight because of size centered on the financial impact. The plaintiff school districts had a financial contribution formula for all 36 school districts. It included a \$1,000 one-time fee and a 50-cent per child annual expense.¹²⁴ As the case progressed over the years, the annual contribution increased due to rising costs.¹²⁵ Ottoman stated, "it was cheaper to try a case with eight plaintiffs as opposed" to the 36 school districts.¹²⁶ Despite the fact that the attorneys were doing their work *pro bono*, the case was costly to the plaintiff school districts.¹²⁷

The general feeling by those who were closely associated with the origins of the *Abbeville* case was that the reduction of school districts was driven by complications associated with a case that had 36 plaintiffs. In addition to wanting to make the case more manageable, the plaintiffs' attorneys were likely to attempt to push the case to trial by eliminating a possible stall tactic by the state. Finally, the reduction of lead school districts to eight saved the plaintiff school districts money.

Reduction: Representation of Legal Arguments

In addition to the size factor, the participants identified other possible reasons for the reduction of school districts from 36 to 8. The most commonly identified reason was that the eight lead school districts best represented the legal arguments the attorneys wanted to make with the case. The insight from the participants related to how the eight

lead school districts presented the best case for the attorneys will be detailed in this section.

Rocker explained how she thought the eight lead school districts were selected when she stated, “they looked for the school districts that had the most serious concerns. They wanted the ones that would be the best exemplars of the points of the case.”¹²⁸ Other explanations included the following, “They realized they could not try or put up every single district. And, so they selected eight districts to be a representative sample”¹²⁹, “best suited for the argument of the case”¹³⁰, “best represented the case we wanted to make before the judge”¹³¹, and “best fit...to make the case that the state needed to improve what it was doing for public education.”¹³²

These statements lead to a question, what was the case the plaintiffs’ attorneys were making before the judge? Red, one of the lead plaintiff attorneys, identified four components to the plaintiffs’ case. These components were: demographics, a passionate superintendent, facilities, and teacher quality.¹³³ Purple identified facilities, teacher quality, and student achievement as the cornerstones of the plaintiffs’ case.¹³⁴ Table indicated facilities, professional development and per pupil spending as the core arguments.¹³⁵ Among these responses, there is sufficient overlap to gain an understanding of what the core issues of the plaintiffs’ case centered on, namely the quality of facilities, teacher recruitment and retention, and student achievement.

The next question asked is did the eight lead school districts support these core issues? Pine, a Pee Dee superintendent, stated, “I think the lawyers looked at what was the worse scenario in each area. Our area was facilities. Some of the others were test scores and poverty level.”¹³⁶ Other comments related to the point school districts were

supporting the legal arguments of the case included, “Allendale was staffing”¹³⁷, the superintendent of Dillon 2 was selected because “he is just a great storyteller”¹³⁸, “my district was rural, not a lot of tax base, and really the prototype for the district that had aligned themselves against the state for the lawsuit”¹³⁹, and “Jasper was selected on achievement.”¹⁴⁰ It appears that the school districts selected to lead the lawsuit did support particular aspects of the legal contentions made by the plaintiffs’ attorneys. However, the selected school districts did not necessarily represent all the aspects of the case.

There is a problem with the apparent selection process implemented by the plaintiffs’ attorneys. By focusing on discrete aspects of the case when selecting the lead school districts the attorneys appear to have overlooked the entire argument. An examination of the financial allocations to the eight lead school districts reveals that not all of the eight districts tell the same story. For example, in 2000 – 2001 the local per pupil revenues present a \$1,803 range between the eight school districts with a low (Dillon 2) of \$1,103 and a high (Allendale) of \$2,906.¹⁴¹ Similarly, the state contributions to the eight school districts in 2000 – 2001 produced a range of \$2,065 with a low (Dillon 2) of \$4,078 and a high (Marion 7) of \$6,143.¹⁴² Finally, the combination of both local and state contributions to the per pupil expenditure also produced a drastic range of \$3,235 with a low (Dillon 2) of \$5,181 and a high (Allendale) of \$8,416.¹⁴³

A similar disparity surfaces when examining other aspects of the plaintiffs’ case. For example, the 2000 – 2001 levies varied between the eight lead school districts significantly. Jasper School District reported a local levy for current operations of 109.5 mills while Hampton 2’s local levy for current operations was 238 mills.¹⁴⁴ As for local

levy for debt service the range went from Dillon 2 on the low end with 10.0 and Florence 4 on the high end with 75.3.¹⁴⁵ When these two levies were combined, the low total levy for the eight lead school districts was Dillon 2 at 127.5 and the high was Hampton 2 at 262.¹⁴⁶

One final example of the inconsistencies between the eight lead school districts relates to academic performance. In the grade 3 PACT for math there are two passing ratings: proficient and advanced. Throughout the state the percent of students to receive either of these two ratings for this test was 32.8%. Between the eight lead school districts the low (Marion 7) was 9.8% and the high (Dillon 2) was 33.7%, which was above the state average.¹⁴⁷ For the 4th grade PACT Math test the state average of students receiving a proficient or advanced score was 23.6% while the low (Jasper) for the eight lead school districts was 6.4% and the high (Dillon 2) was 21.5%.¹⁴⁸ These data help indicate that the eight lead school districts helped tell a story, but they did not always help tell the same story. For example, Dillon 2 was a great school district to illustrate the dilapidated facilities, but it did not help the plaintiffs' case related to the lack of student achievement.

Each participant was asked if the eight selected were the best at supporting the arguments of the case and virtually all responded affirmatively. However, Purple offered the following statement, "There were some districts that I wondered why they didn't select."¹⁴⁹ Other responses provide some insight into why specific school districts were not selected to be lead school districts. The plaintiffs' attorneys attempted to get Clarendon County to be a lead school district, but the superintendent was undecided if he wanted the school district to such an active role. As a result, it was decided not to use Clarendon since the superintendent was not completely committed to the lawsuit.¹⁵⁰

Purple told of one school district superintendent who was fearful of the scrutiny from the trial would prove too difficult for his school district. “One district, for example, was not selected because they had some financial issues, according to my understanding. They had used some building money for operating expenses. They did not want to be scrutinized.”¹⁵¹ These accounts serve to illustrate the complexity associated with selecting the lead school districts. Although some questioned the eight selected versus those that were not selected, these stories serve to remind all that some districts did not want an active role in the case.

Pine, who was a superintendent of one of the eight districts, explained the negative side of being a lead school district. He said, “Not everyone wanted to be a part of the lawsuit. I mean it was not received well by a lot of the communities of the districts that were in it. It is kind of like airing your dirty laundry.”¹⁵² The eight lead school districts had to endure considerable public scrutiny, and that was not always easy. For example, Maple indicated, “I remember one superintendent [who] said, ‘about half of my teachers are good. About a fourth need help and about a fourth are incompetent.’ Well, when the state got to the cross examination, [the lead defense attorney] said, ‘Who are those incompetent ones?’ This created a problem back in the district.”¹⁵³ Another superintendent, whose contract had not been renewed by her school board, was almost fired immediately following her testimony.¹⁵⁴

The most common response related to the second research question was that the eight school districts were selected because they best represented the case the plaintiffs’ attorneys were making before the judge. That case centered on facilities, teacher quality,

and student achievement. Although some might question the selection of some school districts, it must be remembered that many factors went into the selection process.

Reduction: Alternative Routes

When discussing the effectiveness of the eight lead school districts, few participants offered criticisms. Most viewed the eight as the best possible school districts for the case. However, the 2005 ruling suggests the selection of the eight school districts could have been stronger. In this final section related to the second research question, the suggestions offered to improve the plaintiffs' case are presented.

Orange talked about the lack of a "lighthouse district" when discussing the failure of the plaintiffs' lawyers to provide a measurement for adequacy.¹⁵⁵ Just as a lighthouse acts as a beacon and brings attention to dangers ahead, the plaintiffs' case needed a single school district that could concisely illuminate the educational struggles faced by the 36 school districts as a result of the state funding formula. Orange contended that the selection of the eight lead school districts was not ideal because of the absence of one school district that exemplified the entire case clearly.

Aspen, a superintendent of one of the eight lead school districts, raised another issue. He stated he would have selected two school districts that were part of the original 36, "who had power and influence."¹⁵⁶ In explaining the justification for this change, Aspen said that when these types of school districts raise issues, "people listen to them."¹⁵⁷ The implication of this statement is that the eight school districts shared one commonality; they were all politically weak. If, on the other hand, a politically influential school district had been selected, people throughout the state may have taken more notice of the case.

It is rather easy to criticize an action using hindsight vision. However, the challenge is to make the correct decision. Could there have been changes made to the structure of the plaintiffs' arguments that would have made the case stronger? It would appear to be so. These changes could have been seeking a school district that served as a beacon for the entire case or using school districts with more political power and influence.

Conclusion

The information presented in this section has attempted to summarize the answers of the participants related to the second research question. How were the eight lead school districts selected for this case? Various factors were taken into consideration, including attempts to reduce the size of the case and efforts to select school districts that best supported the plaintiffs' legal arguments. There possibly could have been changes that would have improved the plaintiffs' arguments, but there is no guarantee that the suggested changes would have resulted in a different decision. A concern related to the selection process is that the eight selected might have helped one aspect of the case well, but it does not appear consideration was given to how that same district would impact the other aspects of the arguments.

Research Question #3

Historical Introduction: The *Richland* Case

It is of interest to note that a mere five years prior to *Abbeville* the South Carolina Supreme Court ruled on an equity case called *Richland County v. Campbell*.¹⁵⁸ The plaintiffs in this case contended the EFA and the EIA were unconstitutional due to their reliance on local contributions to school districts through property tax assessments.¹⁵⁹

The plaintiffs argued the “shared funding of public education produces disparate revenues and unequal educational opportunities because it is based upon formulas that take into account the individual wealth of the various school districts.”¹⁶⁰

The case was first argued in the Richland County circuit court and Governor Carroll A. Campbell, who submitted a motion to have the case dismissed based on immunity granted to the legislature from the state constitution, argued the lawsuit “lack of standing, lack of authority of certain respondents to provide the requested relief, and the validity and constitutionality of the EFA and EIA.”¹⁶¹ The circuit court granted the motion, and the case was appealed to the state Supreme Court, argued in 1987, and ruled upon in 1988.

The plaintiffs’ case began with an examination of the education clause in the state constitution, which requires the General Assembly to “provide for the maintenance and support of a system of free public schools.”¹⁶² The plaintiffs argued that the word “provide” required the state to pay for the entire cost of public education. The Supreme Court did not accept this argument, and cited a previous case in South Carolina dealing with school finance issues as legal precedence. The case, *Hildebrand, et al., v, High School District No. 32, et al.*¹⁶³, interpreted the state’s education clause to mean the General Assembly has a responsibility to create a system of education, “but the details are left to its discretion.”¹⁶⁴

The plaintiffs also contended that the state funding formula “denies students equal educational opportunities” by taking into consideration the individual wealth of a local school district.¹⁶⁵ The plaintiffs cited two cases from other states, *Robinson v. Cahill*¹⁶⁶ and *Serrano v. Priest*¹⁶⁷, where the funding practices were ruled unconstitutional based

on the inequities they created. They were both deemed violations of the state and federal Equal Protection Clauses.

South Carolina's Supreme Court addressed this point by emphasizing that the state actually had an equalization formula in place that took into consideration the ability of the local communities to pay for education.¹⁶⁸ In the end the Supreme Court ruled the funding formula in South Carolina was constitutional and, as a result, upheld the circuit court's decision to dismiss this equity case.

How is it that five years later a similar lawsuit could be filed? What had changed in South Carolina to make people think the Supreme Court would rule on *Abbeville* differently? Those questions are especially pertinent when considering the fact that *Abbeville* began as another equity lawsuit. In fact, the case did not become an adequacy lawsuit until the Supreme Court defined the education clause to mean "minimally adequate."¹⁶⁹

Introduction

To understand how *Abbeville* differed from *Richland* requires a detailed answer to the third research question. This research question reads, "What legal arguments were used in *Abbeville* by both the plaintiffs and defendants?" The answers to this question will help distinguish this case from previous ones and explain why this case was not dismissed by the state Supreme Court. The answer to the third research question will include a quantitative summary of the participants' responses related to this point. In addition, a detailed summary of the plaintiffs' and defendants' legal arguments will be presented and the two cases will be contrasted to help understand what arguments were made in *Abbeville*. A note needs to be made about the attorneys making these legal

arguments. None of the attorneys for either side of the case came into *Abbeville* with experience in school law litigation. All were trial attorneys who had to learn about all the issues associated with *Abbeville*.

Summary of Interview Data

The various responses from the participants related to the third research question will be grouped into similar answers in this section to present an overview of the types of answers that surfaced during the interviews. These data will begin to explain the types of legal arguments used by both the plaintiffs and defendants in *Abbeville*.

The most common answer offered related to the third research question identified the core arguments for the plaintiffs' case. Though these components will be discussed in greater detail below, these included facilities, teacher quality, and the need for extended learning opportunities for students in the plaintiff school districts. Thirteen people identified the key aspects of the plaintiffs' case. Interestingly, all eleven of those who sided with the plaintiffs offered up this answer. Conversely, only one person who sided with the defense and one person deemed undecided or unclear provided this answer.

There were ten participants who referred to the state Supreme Court's definition of the South Carolina's education clause as having an impact on the legal arguments used by both the plaintiffs and the defendants. The minimally adequate ruling focused the case on adequacy issues. This answer becomes slightly more informative when those who provided the answer are divided into the three categories related to their views on the case. Only four of the eleven participants who sided with the plaintiffs offered this answer, while this concept was mentioned by all three of those who aligned with the defense and three of the four who were either undecided or unclear. Four of the six

participants within the legal category mentioned the influence of “minimally adequate” on the legal arguments used in the case.

Another aspect of the plaintiffs’ case identified by six participants looked at the role of poverty in the learning process. These points emphasized the complex demands children of poverty place on a school system. All six participants who identified this answer sided with the plaintiffs’ case.

A criticism of the plaintiffs’ case was only identified by two participants, but it merits referencing due to the two participants. Both individuals felt the plaintiffs failed to adequately establish a measurement for adequacy in the case. The two who said this were both affiliated closely with the development of the defense’s strategy and, as a result, might be more objective in their critique.

As for the defense’s case, the most common answer identified by the participants was that the state’s case centered on money and the costs associated with the demands of the plaintiffs. There were ten participants who identified this aspect of the defense’s case. Of the ten, seven sided with the plaintiffs, one sided with the defense, and two were undecided or unclear.

Another aspect of the defense’s case that was identified by four participants was the strategy to focus on the standard set by the state Supreme Court, namely that of adequacy. The state was not constitutionally obligated to fund the best educational system; rather it needed to fund an adequate system of public schools. This answer was identified by three people who sided with the plaintiffs and one who sided with the defense.

According to three participants, the state used current data from the plaintiff school districts to establish that the opportunity for a minimally adequate education existed. In other words, if some students were passing standardized tests in the plaintiff school districts, it could be assumed all students had the opportunity and some were choosing to not take advantage of it. Of the three participants to reference this answer, one sided with the plaintiffs, one with the defense, and one was undecided or unclear.

The final component related to the state's case in *Abbeville* was that there was enough money available for education, and that the plaintiff school districts were not using the money efficiently. This idea was presented by three participants, two of whom sided with the plaintiffs, and one who sided with the defense.

One final observation related to these data is that it is apparent there was more consensus related to the plaintiffs' case than the defenses'. A possible explanation for this point could stem from the fact that the trial was dominated by the plaintiffs' case. For example, the plaintiffs called over 70 people to the stand to testify while the state called seven or eight.¹⁷⁰ The plaintiffs' case was vast and, as a result, dominated the trial. Participants' observations related to the defense's strategy was limited to their experiences during the trial, primarily when the state's attorneys cross examined them.

The quantified summary of the interview data begins to explain the legal strategies used by both sides of the *Abbeville* case. However, a deeper understanding of the legal arguments used in the case lies in a detailed examination of the eighteen interviews.

Evolution of the *Abbeville* Lawsuit

Prior to discussing both legal arguments of the *Abbeville* case in greater detail, an overview of the lawsuit will provide proper context for understanding the significance of the various arguments employed by each side. In this section the overview of the case will be presented and the evolution of the lawsuit discussed.

As was stated in the introduction, in 1988 the state Supreme Court ruled the *Richland* case had no legal basis and, as a result, was dismissed. What distinguished *Abbeville* from *Richland* in legal terms? It stands to reason that something set the former apart from the latter; otherwise they would share similar fates. It is interesting to point out that the state submitted a motion to have the *Abbeville* dismissed because “the facts as alleged did not constitute violations of the State or federal constitutions as a matter of law.”¹⁷¹ In ruling on that motion, Judge Thomas Cooper wrote, “The very funding scheme at issue herein passed constitutional muster in *Richland County v. Campbell* on equity grounds. The inclusion in this action of an adequacy claim does not prevent dismissal.”¹⁷² In 1996 Judge Cooper dismissed the *Abbeville* case. In 1999 the state Supreme Court reversed part of Judge Cooper’s ruling, offered the minimally adequate definition, and remanded the case back to the trial court.

Abbeville set itself apart from *Richland* based on the core legal question the case was asking the courts to consider. In *Abbeville*, according to Rabbit, the core question centered on the role of the state in funding education beyond the minimum. Rabbit said, “I did not know if that question had ever been addressed in a legal environment.”¹⁷³ Rabbit felt the courts in South Carolina needed to explore issues related to the state’s minimum constitutional obligations in funding public education.

The *Abbeville* case began as, at the very least, a convoluted equity lawsuit or a cross between an equity and an adequacy argument.¹⁷⁴ Purple discussed the fact that the attorneys “spent a long time arguing if the case is one of equity or adequacy.”¹⁷⁵ Rucker explained the evolution of the legal arguments when she said, “Initially [the case] dealt with a lot of the inequitable distribution of fringe benefits and employee benefit expenses. It was fairly small.”¹⁷⁶ Rucker continued to explain the changes in the case when she observed, “it has been interesting to watch as those issues developed over time and changed... It started very narrow and then got roped up into that whole notion of the movement toward an adequate level of education.”¹⁷⁷

How did the *Abbeville* case settle on adequacy issues? Blue explained, “Justice Finney (the Chief Justice of the state Supreme Court) carefully laid out...the focus of the case. Was the quality of education provided by the state what the constitution required?”¹⁷⁸ Before the state Supreme Court ruling, the *Abbeville* case dealt with a number of issues and after the ruling the case focused on the state’s contribution to an adequate system of education. White explained the situation by stating, “The case is based upon an adequacy argument. We did not have a standard in South Carolina for adequacy. Our Supreme Court established that standard.”¹⁷⁹

The arguments related to the adequacy question proved to be similar between the plaintiffs and defendants. Black, one of the lead defense attorneys, observed that the plaintiffs’ attorneys were “putting up evidence that I just loved. I thought one of us has this backwards. They were proving our case and they liked what we were putting up, so someone had it wrong.”¹⁸⁰ Table explained the similarities between the two arguments by stating, “the arguments between the defense and the plaintiffs were similar, and it was

just a matter of the judge interpreting them.”¹⁸¹ An example of the similar arguments was the examination of graduation rates in the plaintiff school districts. The plaintiffs argued that a 50% graduation rate illustrates the minimally adequate opportunity did not exist. The defendants used these same numbers as proof that the opportunity did exist; arguing that since some were succeeding all had the chance to succeed. In fact, the biggest difference between the two arguments was the size of the case. “At the time [the plaintiffs] had about 70 witnesses and [the defense] had about 8 or 9.”¹⁸²

The *Abbeville* case changed over the years. First, the plaintiffs took almost two years to refine and clarify its legal contention that the state of South Carolina was failing to adhere to its constitutional obligations related to education. Next, the case changed in scope as the state Supreme Court focused the debate on adequacy issues. Throughout all of these changes each side argued their positions diligently.

The Plaintiffs’ Case

In this section the plaintiffs’ case, according to the interview data, will be presented. The data presented will provide half of the answer to the third research question. Various aspects of the legal arguments used in the trial will be presented along with criticisms related to the plaintiffs’ approach to the trial.

1. Adequacy.

As was previously stated, the scope of *Abbeville* changed over the years. Black, the defense attorney, commented, “we tried this adequacy claim and I do not think that is what they had on their minds back in 1993.”¹⁸³ Eventually, with the state Supreme Court ruling, the case’s focus shifted from equity to adequacy. This shift was deemed by one

observer as “a good thing” for the plaintiffs.¹⁸⁴ The implication with this comment is that the plaintiffs benefited from the focus that the Supreme Court provided *Abbeville*.

Although the legal foundation of the case shifted from equity to adequacy, the plaintiffs’ core arguments adapted throughout the process and, as a result, remained the same. Desk, a former governor of the state while *Abbeville* was active, stated, “From the plaintiffs’ prospective the inequities were primarily monetary. The money available for school construction, for teachers’ salaries, and then they talked about student preparation.”¹⁸⁵ These same core issues, facilities, teachers (salaries and quality), and student performance remain key arguments throughout the entire life of the lawsuit. Aspen, a superintendent of one of the eight lead school districts, explained, “we were asking for equity...I would like to be able to hire the same quality of teacher or instructional staff”¹⁸⁶ as the wealthier school districts in the state. Aspen went on to explain that he could not hire the same caliber of teacher or administrator as other districts due to funding disparities.¹⁸⁷

The state Supreme Court interpreted the education clause to mean minimally adequate. Red, an attorney for the plaintiffs, had this reaction to the Supreme Court’s ruling, “the Supreme Court ruled and threw out all of our case except for adequacy related to the education clause. That sort of focused us. We could not talk about issues like disparity.”¹⁸⁸ However, as the focus of the case shifted, the plaintiffs remained focused on three core issues: facilities, teacher issues, and classroom size.

2. The core question.

The core question, according to Chair, in the *Abbeville* case asked the courts to determine if “the state was providing a minimally adequate education to the plaintiff

school districts.”¹⁸⁹ To understand that question requires a closer examination of the Supreme Court ruling and the wording the plaintiffs focused on in that ruling. Prior to defining what a minimally adequate education means, Justice Finney wrote in the 1999 opinion, “We hold today that the South Carolina Constitution’s education clause requires the General Assembly to provide the opportunity for *each child* to receive a minimally adequate education.”¹⁹⁰ For the plaintiffs, the key phrase in that statement was “each child.” Red explained, “Each child no matter the circumstances. So, we focused on each child.... The state tried to focus on the global picture.”¹⁹¹ The plaintiffs were asking if each child actually had the opportunity for a minimally adequate education in the rural and poor school districts of South Carolina?

To demonstrate that the opportunity for a minimally adequate education did not exist for each student in the plaintiff school districts, the lawyers looked at performances on the state’s accountability testing and graduation rates. According to Maple, “...based on South Carolina’s own accountability test, [the plaintiffs] said South Carolina is not meeting its obligations because in the plaintiff districts over half of the students were not meeting the basic standards.”¹⁹² The plaintiffs argued that such a high failure rate clearly demonstrated the opportunity for a minimally adequate education did not exist.

The plaintiffs examined all the state was asking them to do. Many participants echoed the sentiments expressed by Red, who said, “these rural districts did not have the support to pay. They were not only not getting the support [for the various state programs] they needed, they were being given more problems to deal with by the legislature.”¹⁹³ In other words, the state was giving the rural school districts less funds, comparatively speaking, and they were being asked to do more with those limited funds.

Mirror, a former state Superintendent, asked, “Does the lack of funding hamper the ability to learn?”¹⁹⁴ What role does money play in educating a child, and specifically a child of poverty? Mirror went on to observe, “You can look at the academic achievement of those students in those counties and find that students lag. The achievement gap is broad.”¹⁹⁵ Various data indicated that students in the rural school districts were not performing as well on the accountability testing and the plaintiffs used this evidence showed the state was failing to meet its constitutional obligation.

3. The core arguments.

According to the data from the interviews, the plaintiffs’ case hinged on four key points: facilities, teacher quality, student performance, and, to a lesser degree, transportation. Spruce explained the situation with the following observation, “The big thing that the rural districts were saying was that the opportunity was not there. We don’t have the facilities, the classrooms, the personnel, and this is where our evidence came into being. We did not have the opportunity.”¹⁹⁶ Spruce linked the plaintiffs’ arguments to the need for the opportunity of a minimally adequate education. Other examples of statements related to the key points of the plaintiffs’ case include, “Classroom size, teachers’ pay, and fringe benefits”¹⁹⁷, “the ability of rural school districts to pay teachers so they don’t leave...facilities...the fact that students in these poor school districts need more”¹⁹⁸, “facilities, professional development, per pupil funding”¹⁹⁹, and “the three main things were teachers, facilities and extending learning opportunities.”²⁰⁰ These quotes serve to illustrate the near consensus related to the key arguments for the plaintiffs’ case.

4. Facilities.

The accounts addressing the conditions of the plaintiff school districts' facilities were numerous and they all told the same story. Red remembered one school where, "they literally had to rope off part of the hallway because the ceiling was going to fall. They would not let students go to parts of the hall. It was just a terrible school."²⁰¹ How were the facilities allowed to become so dilapidated? The rural school districts were faced with difficult choices with their limited resources and they could not justify upgrading buildings when other, more basic, needs were not being adequately addressed. One superintendent interviewed for this study had his school district offices in portable classrooms so that the limited funds for facilities could directly support classrooms. The plaintiffs' contention was that the facilities were not minimally adequate and that the state had a responsibility to give the rural school districts the opportunity to upgrade their buildings.

5. Teacher issues of recruitment and retention.

In describing the situation related to teacher quality and teacher retention, Juniper stated, "The quality of teaching staff for the rural school districts was one core issue. How are we to attract and retain quality teachers?"²⁰² The rural school districts struggled with both recruitment and retention for a number of reasons. One participant observed, "A young person who is going to move to South Carolina will look to move to a place where the opportunities for education, entertainment, and some of the other things will be available to raise their family."²⁰³ Reality is that the rural counties do not have the types of entertainment and economic base to appear attractive to a lot of people. In fact, many of these communities lack decent housing opportunities, due to the fact that most of the residences live in trailer homes.

In addition to the issues related to recruitment, the rural school districts struggle with retaining good teachers. Pine described the plight in his school district, “It is almost like a bidding war to get the top teachers. We lose every time. We are right on the North Carolina line so we lose to North Carolina or we lose to other districts in South Carolina. We touch Horry County, which includes Myrtle Beach.”²⁰⁴ Aspen experienced a similar situation in his school district. He competed with Savannah, Georgia and Hilton Head, South Carolina. He lacked the resources to attract and retain teachers when competing against these other areas. All of the superintendents that participated in this study discussed the fact that the rural school districts would train new teachers and, after a few years, many of these teachers would take jobs with higher paying school districts. A former math teacher in Dillon 2 School District who left for a more lucrative position with a neighboring school district testified in the trial. When asked if he would consider returning to the poor, rural school district if the salary was the same, he replied, “no.”²⁰⁵ The reason he gave for not wanting to go back included the inadequate facilities, the lack of support necessary to positively impact poor children, and the finances. Aspen summarized the points of facilities and teacher quality when he stated, “Facilities and highly qualified staff were my issues. If I could get those two things I think I could do the kind of things that lead to the improvement that needs to be done in this district.”²⁰⁶

6. Student achievement.

The next core argument related to the plaintiffs’ case addressed the academic performance of the students in the plaintiff school districts. As stated above, there is a real achievement gap between the plaintiff school districts and the rest of South Carolina. Not only are poor children struggling academically when compared to the rest of the

state, these students come to school with many more issues that need to be addressed before meaningful learning can take place. Spruce explained the situation by saying, “Poverty plays a big part in a child’s educational opportunities to learn. When they go home they are raised by their grandparents too often... We spend so much more on educating a poor child.”²⁰⁷ Chair talked about the dropout rates as a real “issue that these poor school districts wrestle with.”²⁰⁸

What is the solution to closing the achievement gap? According to Mirror, “The socio-economic background of the families and the fact that you need extra help in terms of early childhood education, after school programs, yearlong school, and highly qualified and dedicated teachers. If we had yearlong school and more time on task...you could close that achievement gap.”²⁰⁹ She argued that by improving the quality of teachers in the rural school districts and by requiring the students in these districts to go to school for more time, both during the day and throughout the calendar year, the well documented achievement gap would begin to close.

Ottoman posed an interesting question related to the role of poverty in education, “Does it require something different to teach a kid in a poor, rural community than it does a kid in an urban community?”²¹⁰ The plaintiffs’ contention was that it did require additional resources to provide a poor child a minimally adequate education. Red talked about a strategy used by the plaintiffs’ attorneys, “we had to do a lot to educate the judge—that there are children in this state who are disadvantaged from the beginning. They are not being educated. There are barriers because of their circumstances and it is primarily poverty.”²¹¹ Pine offered this explanation, “[t]here needs to be some extra

funding somewhere, some extra weight because of poverty which these rural districts deal with.”²¹²

In explaining the need for additional resources, Spruce stated, “It’s generational poverty. It is children whose parents are high school dropouts. And they are raising typical dropouts. We do not have the resources to provide that child with...help. Things are not funded in order to get that child out from this cycle.”²¹³ Multiple participants talked about the need for a comprehensive program to reverse “generational” poverty. Such an approach would need to address health care issues, illiteracy, job training for adults, and parent skills, to mention just a few. The plaintiffs contended that without a comprehensive approach to addressing the issues related to poverty, poor children would not have the opportunity for a minimally adequate education.

7. Pupil transportation.

A final key component of the plaintiffs’ case was only mentioned by four of the eighteen participants. It appears the component was significant at the beginning of the case, but, as the scope of the lawsuit grew over the years, it began to diminish in importance. Red recalled “presenting the transportation argument”²¹⁴ in the trial. Pupil transportation expenses, along with fringe benefits, were educational expenses that traditionally the state of South Carolina had paid for in full. However, in the early 1990s, when the General Assembly began pushing a portion of this expense to the local school districts, pupil transportation created significant financial hardships for the rural school districts. It stands to reason that pupil transportation issues were significant to the beginnings of the lawsuit. Spruce talked about the importance of buses for rural school

districts. Without it, students would not be able to come to school, “90% of our students rely on transportation [from the school districts to get to and from school].”²¹⁵

8. Money.

It is interesting to note that a number of participants talked about how the *Abbeville* case was not about money, it was about providing students in rural school districts a minimally adequate opportunity at receiving a quality education. However, statements about the case not being about money were quickly qualified with statements such as, “you cannot, in your fondest dreams, think that these people in these rural areas can pay what it takes to get the education at a level where it needs to be”²¹⁶ or “if you don’t have a local tax base you cannot supplement teachers’ salaries.”²¹⁷ In other words, *Abbeville* is about educational opportunities, and these opportunities are made available through an increase of resources from the state when the local community is unable to make a significant contribution to education.

9. Geography.

Another argument to the plaintiffs’ case addressed the role of geography in determining the academic success of a student in South Carolina. Ottoman posed the question, “Does it make a difference in educating the child if the environment is poor and rural?”²¹⁸ The test data from South Carolina suggests that students in poor school districts struggle academically. Pine pointed out, “...kids don’t have a say on where they were born.” The plaintiffs’ argued that the current educational funding formula favors those students who were fortunate enough to be born in, or live in privileged areas of the state. Ottoman argued that in South Carolina a student “ought not to be condemned...to a

less than quality education”²¹⁹ based on geography. Where a student was born or is raised should not impact the quality of education he or she receives from the public schools.

10. Problems with the plaintiffs’ case.

Concerns related to the plaintiffs’ case were also identified and deserve recognition. Rocker identified a possible problem with the plaintiffs’ case. She argued it was too large. The plaintiffs called over 70 witnesses and submitted thousands of documents for the court to consider. This led Rocker to ask, “You could get [overwhelmed] with the boxes and boxes of evidence. You just wondered how many pieces of paper did it take to prove the point?”²²⁰ In addition, the plaintiffs never presented clear remedies for the case. The plaintiffs’ failure to identify a clear remedy meant the judge would be responsible for developing a solution if he ruled in favor of the rural school districts. This thought led Black, the defense attorney, to observe, “we are not saying there are not problems. But, ‘Judge, what makes you think you can fix them any better than the people whose job it is to fix them [the General Assembly]?’”²²¹

To summarize the plaintiffs’ case, a table has been developed to identify the key arguments and provide a degree of explanation regarding each point. This table will be used again after the defendants’ case is summarized to visually contrast the two cases.

Table 4.3: The Plaintiffs’ Case

The Plaintiffs’ Case	
Core Arguments	Definition
Facilities	The plaintiffs submitted an extensive amount of evidence regarding the dilapidated conditions of school facilities in the rural areas of South Carolina. Evidence included a building built in 1918 that was still in use, moldy bathrooms, condemned auditoriums, crumbling walls and ceilings, and leaky roofs that impeded the educational opportunities of students. Poor facilities influenced teachers’ decisions to move to different school districts where equipment was far superior.

Teacher Recruitment and Retention	The plaintiff school districts struggled to hire teachers, let alone highly qualified ones for the complex needs of their students. These school districts lacked the funds to attract the best teachers and the ones that they did hire would, too often, take jobs in other school districts after a number of years because of the higher salary. Ultimately, these rural school districts were left to hire foreign-born teachers, graduates from non-accredited institutions, and/or teachers with non-traditional licenses.
Student Achievement	Students in the plaintiff school districts are not performing as well as students from the rest of the state on end-of-year testing and other academic measurements. There is an achievement gap that begins to form before the students start in school and continues to widen with each passing year. These students need extended school days and extended school years to close this achievement gap.
Pupil Transportation	Transportation is the only way many students in the plaintiff school districts can get to school and with state cutbacks, the opportunities for field trips and other enriching activities are reduced.

The plaintiffs' case emphasized the fact that the rural school districts did not have the necessary resources to upgrade facilities, hire highly qualified teachers, or offer students extended learning opportunities due to the state's funding formula. And, the fact that these educational opportunities were missing in the poor, rural school districts created a situation, according to the plaintiffs' attorneys, that denied students in the plaintiff school districts an opportunity for a minimally adequate education. The plaintiffs' case was extensive and took a vast majority of the trial time. In the end, the plaintiffs' case argued that "the morally correct thing to do was to help these students and that the need for help was great."²²²

The Defendants' Case

In contrasting the purposes of the plaintiffs' case to that of the defendants', it appears the latter had the easier task. The defendants' purpose was to prove that the opportunity for a minimally adequate education existed. The process the defendants went through to prove that such an opportunity existed will be discussed in this section. After addressing the core arguments of the defendants' case, according to the interview data, a table will be presented that contrasts the legal arguments employed by the plaintiffs and the defendants.

1. Legal jurisdiction.

One of the first strategies implemented by the defendants was an attempt to get the case argued directly before the state Supreme Court and bypass the circuit court all together. The defendants argued that the *Abbeville* case was similar to the legal arguments in the *Richland* case.²²³ And, since the state Supreme Court had ruled on *Richland*, the precedence and jurisdiction has been established for similar suits, such as *Abbeville*, to go straight to the state's top court. Although both the plaintiffs and the defendants debated this legal point extensively, in the end it was determined to hold the case in the trial court first.

2. Not an equity case.

As was discussed above, the scope of the plaintiffs' case grew over the life of the lawsuit. A casual review of references to the trial in the Columbia newspaper reveals a degree of uncertainty related to the purpose of the lawsuit. The *Abbeville* lawsuit was described as the "lawsuit challenging how the state funds education"²²⁴, "the state's school funding fairness trial"²²⁵, "the adequacy of education funding for students throughout the state"²²⁶, and "eight rural districts are suing because of what they say is an

unfair system for funding public education.”²²⁷ These newspaper references serve to illustrate the ambiguity of the lawsuit due to the fact that it was repeatedly modified over the years. One of the possible reasons the scope of the lawsuit changed with time was explained by Orange, “the General Assembly took away any means of saying [the core issue] was poverty.”²²⁸ The defendants were equipped with the equalization formula contained in the EFA and could demonstrate to any court that the state had taken progressive steps to address issues related to poverty.

3. Minimally adequate-the legal standard.

While the plaintiffs have a complex case that hinged on four key points, the defendants had a rather simple argument, in comparison. When the Supreme Court remanded the case back to the circuit court for trial it also established the focus of the defense’s case. Black explained the defense’s strategy when he stated, “I really thought the court was giving us the lowest standard that was possible. And I really thought that was appropriate. Not that education policy in South Carolina should strive for the lowest standard, but that is not what we are talking about.”²²⁹ The defense’s standard was defined as minimally adequate. For the state’s actions to be deemed constitutional they had to establish that the current educational system was minimally adequate. This fact led Pine to bemoan, “that is all they talked about...minimal.”²³⁰ Although it may have been frustrating that the defense focused on minimal, it was the legal standard before the court and that standard favored the defendants. Rabbit succinctly stated, “the state of South Carolina is required to provide a minimally adequate education for its citizens.”²³¹

Many people affiliated with the plaintiffs’ case questioned the state of education in South Carolina if minimally adequate was the standard. However, minimally adequate

was not necessarily the ideal standard for education, but it was the constitutional standard that the state, at the very least, had to meet. Desk summarized the difference between constitutional and ideal standards by stating, “I always looked at the question of the lawsuit as one where the court was asked if the state is meeting its constitutional obligations and not its moral obligations.”²³² The defendants’ case was to keep the lawsuit focused on the minimally adequate bar, which, according to Black, “was about as low as it could be set”²³³, and not drift into discussions on the “perfect education system” or “whether [the education system] ought to be better.”²³⁴

With such a low standard focusing the discussion of the case, the defendants’ strategy was quite simple. Table explained the legal argument when she said, “the defense sought to prove that everything was funded at a minimally adequate standard.”²³⁵ If the defendants were able to convince the judge that everything in public education was funded at the minimally adequate standard, then the state was meeting its constitutional obligations.

4. Measurement for opportunity.

Another component of the defendants’ case was to attack the plaintiffs’ position or to make their obligation more difficult. Black posed an interesting question that illustrated the difficulty with the plaintiffs’ position, “How do you measure if an opportunity exists or not?”²³⁶ The difficulty in measuring if an opportunity exists was manifested in the fact that both the plaintiffs and the defendants would use the same results to prove their point. Orange felt this was a significant failure on the part of the plaintiffs, “How do you measure adequate when you don’t have a yardstick? They never had a yardstick.”²³⁷

5. Evidence of opportunity for a minimally adequate education.

The defendants' case took each of the plaintiffs' points and examined them from the minimally adequate standard. For example, Chair talked about how the defendants addressed the issues related to student achievement when he said, "the defense argued that 10 – 30% of students were succeeding in school so that showed that the offerings from the state were adequate... That was a good legal argument, but it is not a good educational argument."²³⁸ Red interpreted the defense's strategy as trying "to focus on the global picture. If you had an opportunity for one, you had an opportunity for all."²³⁹ In one of the most telling statements about how confident the defendants were with their case, Black said, "we were not even attempting to respond to" the plaintiffs' case.²⁴⁰ The state Supreme Court had set an extremely low constitutional standard with their interpretation of the education clause, and the defendants stayed focused on that standard throughout the trial.

The defendants' response to the issue of quality teachers in the rural school districts took a similar tact. Ottoman, referring to the defendants' focus on overall teaching quality in the plaintiff school districts, stated, "[the defendants] had enough people they could point to with that kind of credentialing that refuted the argument that the plaintiff school districts struggled to hold onto qualified teachers."²⁴¹ In addition to arguing that qualified teachers were working in the plaintiff school districts, the defendants contended these school districts must mismanage their funds since they did not get the same outcomes as other school districts in the state.²⁴²

The defense's argument that facilities were minimally adequate focused on the funds that the General Assembly set aside for the school districts across the state to

upgrade their buildings. It is interesting to note that, according to Ottoman, the billion dollar, one-time bond “passed in the house by one vote. It was a republican from Charleston [who voted for the bond], and they came back that next election and defeated her for having the audacity to vote with the democrats on this issue.”²⁴³ A republican dominated state took the actions endorsed by the state democrats to argue that their efforts to fund education were minimally adequate.

6. Actions of the General Assembly.

The defendants also emphasized that the General Assembly had taken significant steps to bolster education from the time the *Abbeville* case was first filed (1993) to the time it actually went to trial (2004). Black stated, “We wanted to show that the General Assembly was, in fact, a good steward of educational policy. Was that a legal issue? No, but we wanted to take some pains to show how the General Assembly had responded to situations put before it. Especially in the ten years since the lawsuit had been pending.”²⁴⁴ Table 4.4 contrasts the plaintiffs’ case against the actions taken by the General Assembly from 1993 to 2005.

Table 4.4: Contrasting Plaintiffs’ Case to General Assembly’s Action, 1993 – 2005

Plaintiffs’ Case	Defendants’ Case	
Argument	General Assembly’s Action	Description
Facilities	Billion Dollar Bond ²⁴⁵	This one time bond was made available to school districts throughout the state for facility upgrades. Many of the plaintiffs’ dilapidated facilities were upgraded through this bond.
Teachers	Teacher Pay Enhancement	The General Assembly made money available to rural school districts throughout the state so they could supplement the amount they can pay teachers in the hopes that they would be able to attract and retain a better pool of educators.
Student	First Step Program	The First Step program is a pilot pre-

Achievement		kindergarten effort run by a former governor. In fact, after the 2005 <i>Abbeville</i> ruling, the General Assembly set aside \$24 million for a statewide pre-kindergarten program. Roughly a third of this money went to the First Step program and the rest to the plaintiff school districts.
Pupil Transportation	No action identified	No one mentioned any specific action taken by the General Assembly to address transportation issues. However, it deserves to be mentioned again that pupil transportation ceased to be a major component of the <i>Abbeville</i> lawsuit as its scope grew.

The point of table 3.6 is to illustrate that the General Assembly did take steps to address many, if not all, of the concerns raised by the plaintiffs in the *Abbeville* lawsuit before it actually went to trial.

7. Money mismanagement.

Another argument the defendants took in *Abbeville* was to look at the state's expenditures associated with public education. Ottoman explained the state's view on this matter by saying, "Part of their argument, their main argument was, 'we are funding the schools adequately. We are giving these schools money; they are just not using it effectively.'"²⁴⁶ To illustrate this point, the defendants would compare the per pupil expenditures of the plaintiff school districts to some of the highest performing school districts in the state. The plaintiff school districts received, in some cases, twice as much as the other school districts and still struggled to produce the desired results.²⁴⁷

Juniper explained the defendants' view of the education climate in South Carolina by saying, "[the defense] argued that the money the state provided for education was being mismanaged."²⁴⁸ The defense looked at dollars and cents and agreed that there was

enough money in the system. White explained it by stating, “They did not look very much at outputs. They did not look at achievement gap. They did look at money being spent on buildings, teachers, books in the library, but not at student achievement.”²⁴⁹

8. Student performance.

The defendants also argued that the children being served by the rural school districts could not be expected to succeed at the same level as students from more affluent communities. Purple explained the defendants’ efforts on this point by saying, “it wasn’t possible for the students in rural settings to succeed because they came to school so unprepared that the state could never educate them sufficiently.”²⁵⁰ Black made the following observation related to this point:

“The irony of this case to me is that we were so successful in persuading the court that non-school variables, and especially pre-school variables, had an effect on achievement, that [the judge] basically picked up that glove and said, ‘Go and do something about that.’ I have often said maybe we did too good of a job on that [point].”²⁵¹

Black felt the defendants did such a good job of arguing that the state cannot overcompensate for all the issues that are associated with children from rural school districts that Judge Cooper ordered the state to try to do something in the form of a pre-kindergarten program.

The defendants’ arguments in *Abbeville* centered on the minimally adequate standard established by the state Supreme Court. This standard set a low legal bar for the state to get over, and the subsequent arguments attempted to demonstrate that the opportunity for a minimally adequate education existed in the plaintiff school districts.

The defendants argued that the General Assembly was meeting its constitutional obligation and that it ought to be allowed to continue to watch over public education.

Conclusion

When asked what the core issue of the *Abbeville* case was, Rucker provided an answer that had been hinted at by others, but no one else answered as bluntly. “I think the core issue never got onto the table. And that was because...I think the core issue is race.”²⁵² Rucker went on to talk about how South Carolina’s economy has been built on the backs of uneducated and predominantly minority laborers. The implication of her statement was that improved educational opportunities in the rural school districts of South Carolina would jeopardize the availability of this cheap workforce.

When comparing *Abbeville* to *Richland*, a question surfaces. Why was *Abbeville* successful in going to trial when *Richland* was not? The answer lies in the fact that the case asked the court to determine the degree of support the state was required to provide public schools. The state Supreme Court interpreted South Carolina’s education clause to mean minimally adequate in *Abbeville*. This ruling kept the case alive. However, this same point of law that kept the lawsuit alive provided the legal standards for the defendants to successfully argue most of their case.

Research Question #4

Historical Introduction: The Impact of Electing Judges in South Carolina

South Carolina’s Constitution clearly details the election process for state judges. In article V, section 3 it reads, judges “shall be elected by a joint public vote of the General Assembly for a term of ten years.”²⁵³ Every ten years a judge appears before the General Assembly to be authorized to continue to serve as a judge for another ten years

or to be voted out of the position. All state judges are subjected to this election process, including state Supreme Court Justices. South Carolina's selection process brings to light a long standing debate related to judges in a democratic society; namely, should judges be appointed or be subjected to a degree of accountability through an election process? With either approach of selecting judges there are advantages and disadvantages.

Judges are typically divided into one of two categories based upon the process a state follows related to their appointment and the length of the term they serve: independent and dependent.²⁵⁴ Judges are considered independent if the state implements a selection process that exempts them from being influenced by either of the other two branches of government.²⁵⁵ States that have lifetime appointments for judges maximize the independence of the judicial branch from the executive and legislative branches of government. By contrast, dependent judges are required to run for reelection, before an electorate, consisting of either an elected legislative body or the general population, when the predetermined judicial term expires.²⁵⁶ In summary, "when Americans want to make their judges independent they appoint them and when they wish instead to make them accountable they elect them."²⁵⁷

The advantage of having an independent judicial branch is that the judges are "protected from political influence more effectively than elective procedures."²⁵⁸ Appointed judges are not required to answer to anyone for their rulings and, consequently, they are more likely to do what they consider to be right as opposed to kowtowing to political pressure or enduring "political meddling."²⁵⁹ Conversely, the advantage of a dependent judicial branch is that the judges in this system are accountable

for their rulings. As a result, the likelihood of a maverick judge who fails to take into consideration the law of the land and the will of the people is diminished.

Of the 50 states in America, only three have their legislative body elect judges: Virginia, Rhode Island, and South Carolina.²⁶⁰ Of these three states, only South Carolina provides its General Assembly “full authority to choose judges.”²⁶¹ What influence does South Carolina’s form of judicial accountability have on the rulings that come out of the state courts? Are the state judges willing to go against the state when they know that they have to appear before the General Assembly every ten years to face reelection? Judge Thomas J. Cooper heard the trial arguments in *Abbeville* and rendered the 2005 opinion. Many participants in this study echoed the following sentiments stated by Ottoman, “I had such high hopes for him because he was retiring.”²⁶² It was as if people in South Carolina recognized that the judges had to answer to the General Assembly and, as a result, were hesitant to take a position that could upset the state. Since Judge Cooper had announced his retirement, many felt he was beyond the General Assembly’s possible influence.

Introduction

When the *Abbeville* case was filed against various agencies at the state level, there were a number of options for the defendants to consider as a form of response to the lawsuit. For example, the state representatives could have contested the lawsuit in a court. Additionally, the state could have conceded each of the issues raised by the plaintiffs without a fight. Finally, the state could have worked with the rural school districts on a compromise that would have placated all sides involved in the lawsuit. In the end, the state representatives have a responsibility to do what is best for the state, which adds a

layer of complexity to the lawsuit since the rural school districts wanted what they thought was best for their students.

To fight the lawsuit would result in a lengthy legal battle that would tie up limited resources for the state as well as the suing school districts. To concede each point would take the responsibility of stewardship over public education from the General Assembly and give it to the local school districts. To negotiate would work if both sides were willing to come to the table and make concessions. The focus of this section is to use the data from the interviews to answer the fourth research question, which reads, “Why did the state choose to contest the lawsuit?” It is interesting to consider the degree of confidence some state representatives might have had related to any lawsuit, including *Abbeville*, as a result of judicial election process. When considering the time and resources that were dedicated to this legal fight by both sides²⁶³, was such a fight in the state’s best interest? To answer this research question data will be taken from the eighteen qualitative interviews to present the many possible reasons why the state opted to fight the lawsuit as opposed to working with the plaintiff school districts to address their issues.

Summary of the Interview Data

In this section the frequency of responses regarding to the various points raised in the interviews related to the fourth research question will be reported. These frequency counts serve to illustrate the degree of consensus for each response and help explain who is offering the information as the frequency counts are disaggregated based on the respondent’s affiliation to one of the three predetermined subgroups: plaintiffs’ case, the defendants’ case, or undecided/unclear.

The most common answer provided in the interviews related to the fourth research question pointed out that the legal threshold, minimally adequate, was so low that the state felt like it was already meeting its constitutional obligations. Seven participants offered this answer. It is interesting to point out that the minimally adequate ruling was handed down in 1999 and the state decided to fight the lawsuit prior to that ruling. Of the seven people, two sided with the plaintiffs, three with defendants, and two with the unclear/undecided.

Six people identified money as a reason the state chose to fight the lawsuit. These six people felt the state saw a negotiated resolution to the issues of the lawsuit would require more money than the millions spent to present the defendants' case. Five of the six people sided with the plaintiffs and the other person sided with the defense.

Five participants suggested that the reason the state opted to contest the lawsuit stemmed from the fact that plaintiff school districts came from powerless areas of the state and, as a result, had little political influence. The implication of this argument is that if the plaintiff school districts had more influence the state might have been more willing to listen and negotiate. Of the five people to suggestion this point, two sided with the plaintiffs, one with the defense and two with the undecided/unclear.

The next point that was mentioned by five different participants suggested the state contested the lawsuit because the sentiment was the General Assembly was sufficiently supporting education. Three people who offered this answer sided with the plaintiffs, one sided with the defense and one was undecided/unclear.

Three participants each only raised the final two points, but they are thought provoking and merit mentioning. Three people implied the state contested the lawsuit

because of race. Two of the three people who offered this explanation sided with the plaintiffs and one was undecided/unclear. Three people also offered the other interesting answer, and it suggested that ego was the reason the state opted to fight the lawsuit. All three of the people to offer this reason sided with the plaintiffs.

These answers begin to tell some of the story regarding the state's decision to fight the *Abbeville* lawsuit. However, the issue related to this research question is far too complex to allow a descriptive statistic to tell the complete story.

Reasons the State Challenged *Abbeville*

Chair pointed out a problem with the fourth research question when he posed the following question, "Who is the state? I work for the firm that handled the lawsuit and I am a former governor. [The former state Superintendent], for example, testified and she was very much in support of the action."²⁶⁴ For the purpose of this research question, the state is confined to those who resisted the plaintiffs' actions to create a more favorable funding formula from the state. In this section nine different possible reasons the state opted to fight *Abbeville* will be presented.

1. The state was supporting education.

Rabbit observed, "I could not locate any pronouncement that indicated that the state, as an entity, had an obligation to support public education to the fullest extreme possible."²⁶⁵ Rather, the standard that guided the General Assembly was the education clause, which required a minimally adequate system of education. Chair pointed out that the General Assembly "defended itself by saying that it was already addressing some of the issues related to these poor, rural school districts."²⁶⁶ In addition, Table observed that, "South Carolina was leading the nation when it passed the EFA. It recognized the

abilities and inabilities of local communities to pay for education.”²⁶⁷ Basically stated, the state was not obligated to provide the best possible system of education, rather the expectation was a minimally adequate system. And, since the standard was so low, the General Assembly felt like it was meeting its constitutional obligation.

If the General Assembly assumed it was meeting its constitutional obligation, it stands to reason it would fight a lawsuit contesting the opposite. Table explained that the General Assembly’s decision to fight the lawsuit was not a manifestation, “of an insensitivity on the state’s part. Rather, I think it is a larger implication that the state is aware of the issues.”²⁶⁸ Purple offered an alternative explanation related to the decision to fight the lawsuit when she stated, “the state did not want to do anything about the problem.”²⁶⁹ Regardless of the motive, it appears that the state representatives felt that the General Assembly was doing enough to fund education according the constitutional standard it was obligated to follow.

2. The state’s position was affirmed by the 1996 and 1999 rulings.

By way of review, the first ruling related to *Abbeville* was rendered in 1996 when Judge Cooper dismissed the lawsuit based, in part, on the legal precedence established in the *Richland* case. Then, when that ruling was appealed to the state Supreme Court, the minimally adequate standard was established. In both of these rulings two different courts affirmed the defendants’ position, or that of the state. Ottoman offered the following observation on the impact of the 1996 ruling, “when Judge Cooper threw it out he said, I am paraphrasing here, in effect, ‘You do not have a case here and the General Assembly is doing what it is supposed to be doing.’”²⁷⁰ In regards to the minimally adequate

standard, Table suggested, “it was clear that the state was making more than an adequate effort.”²⁷¹

3. The constitutional standard-minimally adequate.

Throughout the interview process, most of those who sided with the plaintiffs expressed disappointment over the state Supreme Court’s definition of the education clause. Many felt the minimally adequate standard was morally wrong. Rabbit offered the following significant insight on the minimally adequate standard, “the opinion had to address the issue before the court in a fair manner.”²⁷² In other words, Rabbit recognized that the state Supreme Court had to focus its opinion on the constitutional question it was being asked to answer. It is not to say that the Supreme Court Justices who sided with minimally adequate ruling felt the standard was the ideal for the state, rather it was true to the wording of the state constitution.

Blue, an attorney by trade, offered this observation related to the state Supreme Court ruling, “We are stuck in South Carolina with a constitution whose provisions have been interpreted to mean the state is required to provide a minimally adequate education.”²⁷³ The standard is the law and, according to Desk, success for the state was “derived from that one word-minimally.”²⁷⁴ Black, one of the lead defense attorneys, offered the following candid observation, “[the minimally adequate ruling] was a standard that was very favorable to the defense.”²⁷⁵ Black went on to explain that the state opted to fight the lawsuit because the General Assembly was, “in constitutional compliance.”²⁷⁶ Desk, a former state governor, analyzed the minimally adequate standard and offered this reaction, “I always had questions about whether or not [the plaintiffs] would be successful in this lawsuit.”²⁷⁷

A possible reason Desk and others felt the minimally adequate standard favored the defendants was that the General Assembly was providing a system of education throughout the state and students were receiving an education. When asked why the state challenged the lawsuit, Chair, a former state governor, offered this thoughtful suggestion, “If the state did not defend itself, since it was a constitutional question, it could have been dangerous. The state could have said, ‘We feel like we are meeting our constitutional obligations, but let’s sit down and talk about it.’”²⁷⁸ Unfortunately for the children of rural South Carolina, such a conversation never took place. Rather, the state recognized that it was only obligated to meet a low standard regarding the system of education and, as a result, opted to fight the lawsuit.

4. A money issue.

Within the umbrella of money there were two explanations as to why the state contested the *Abbeville* lawsuit. The first answer related to money recognized that the state would either have to take existing funds from other programs to supplement education or raise taxes. These are difficult political and economic decisions few want to make. Mirror explained the money issue by stating, “The funding, which was the remedy in this case, was going to come from...the state legislature.”²⁷⁹ The state did not want to cut funding from other programs, and according to Ottoman, the political climate in the state in the early 1990s precluded many from even considering the notion of raising taxes. She went on to say, “I think the bottom line is money. The reason people fought it is the price tag and where the money would come from.”²⁸⁰

The second issue related to money centered on a defense stance that many stated. White explained the position by saying that the state, “did not feel like there was a

problem. The state did fund an adequate education and, perhaps, [the money] was not being used as it should. The money should go into the classrooms and not into administration.”²⁸¹ Table explained this same idea by stating, “I think there is a possible allocation issue, possible flexibility issue. Local schools do not have the flexibility to take the funding given to their schools and use it where their students need it. Look at our revenues streams, there is a lot of money that goes to the local schools.”²⁸² The state might have decided to fight the lawsuit because there was sufficient money in the system, however the money was not being used most efficiently.

5. Ego.

Another possible explanation concerning the state’s decision to fight the lawsuit suggested ego, or an inability to admit there was a problem, was at play. Purple explained it this way, “[the state] would have to admit that the current policies related to education are not working. There is an ego issue at play.”²⁸³ Ottoman recalled hearing her colleagues express the following sentiment, “[t]here were some who said, ‘How dare they sue us’ and ‘they are not going to win.’”²⁸⁴ Maple viewed the ego as, “arrogance. I think, maybe more than arrogance, it is resentment that anyone would question their authority to run the state.”²⁸⁵ The disturbing aspect of this possible explanation is that people in the General Assembly were willing to ignore the plight of students in rural school districts to prove a point.

6. Plaintiffs had limited political power.

The implication of this possible explanation as to why the state chose to fight *Abbeville* is that those that constitute the state only listen to those with political influence. Political power in South Carolina is not evenly distributed throughout the state. Rather,

there are population centers that have a greater share of the political power in the state. Rabbit observed that, “[i]t is the most difficult thing in the world to get economically affluent political leaders to say, ‘Let’s share the influence that we have with our less fortunate neighbors.’”²⁸⁶

One reason it is difficult to get those who have the political influence in any state to share with those who do not stems from the fact that many people have no idea what other people actually experience. Desk explained this phenomenon by stating, “many of these folks are from suburban school districts and they had no clue of what it is like to live in Bamberg or other rural communities and the challenges”²⁸⁷ in these communities. It is a lot easier to hoard political power when you are ignorant to the plight of others.

Red observed, “[t]he state is trying to satisfy everybody, particularly the population centers because that is where the votes come from. And so, politics makes it tougher on education.”²⁸⁸ Orange provided this insight related to the *Abbeville* case, “Some of the wealthiest school districts did not join the suit... So, your delegates and senators in the General Assembly...decided to fight it.”²⁸⁹ The lawsuit failed to attract the most influential school districts, and without them the lawsuit did not garner the support of the political power base of South Carolina. Failure to include the influential school districts of South Carolina in the lawsuit also resulted in the loss of “the parent advocates you have in the suburban areas”²⁹⁰, according to Desk.

Ottoman succinctly summarized the lack of political power within the plaintiff school districts with the following comment, “[w]e are powerless. It is a double whammy. We are rural and it is a community of color.”²⁹¹ The implication of this statement is that the state had no incentive to work with the plaintiff school districts.

Rather, as a result of the lack of political power of these rural communities, the state could opt to fight the lawsuit with few negative repercussions.

7. The role of race.

Another possible reason for the state choosing to fight the *Abbeville* lawsuit compliments the notion that the rural school districts had no political power. In addition, as stated above by Ottoman, these communities were predominantly minority. Maple blunted stated, “the state is not meeting its obligations for these children. And, I do not think it is coincidental that these children are black.”²⁹² Purple suggested that people in the state “don’t want these children to be educated” and that the funding practices in the state created a “caste system.”²⁹³ For virtually the entire history of South Carolina, the state’s economy has been built on the backs of cheap and uneducated labors, and a vast majority of these people have been African Americans. As a result of this fact, some have suggested that the state chose to fight the lawsuit because it did not want to lose this cheap and uneducated labor force.

8. General Assembly’s dual roles.

The General Assembly is charged with the duty of funding public education and took the lead in fighting the lawsuit. Juniper offered the following explanation concerning these two duties, “the legislature is responsible for the problem and, since they are so close to the problem, they do not see it as a problem. So, they are in no position to fix it. They created the problem, how are they going to fix it?”²⁹⁴ In other words, the General Assembly did not see their efforts at funding education as a problem to begin with, so it does not seem likely that a lawsuit from these rural school districts is

going to change attitudes. Rather, the General Assembly appeared confident that it was meeting its constitutional obligations and, consequently, pushed to fight the lawsuit.

9. Limit the role of the courts.

Black presented the idea that the decision to contest the lawsuit stemmed from a desire to limit the power or influence of the courts in South Carolina. He stated, “[t]he fundamental policy reason is education is a policy matter. And, the state of South Carolina, my clients, were very interested in preserving the rights of the elected branch of government to make those policy decisions and not create a policy by judicial fiat.”²⁹⁵ Black saw his role in litigating the case as one of establishing a precedence for limiting the influence of the courts in policy matters. The legal question in *Abbeville*, according to Black, was “Does the opportunity [for a minimally adequate education] exist or does it not exist? If it does not exist, why?”²⁹⁶ The case was not asking the court to tell the General Assembly how to run public education and Black wanted to ensure that did not happen.

These nine possible explanations provide greater understanding concerning the decision by the state to fight the *Abbeville* lawsuit. The possible answers range from a sense that the current system of public education in South Carolina fulfilled the General Assembly’s constitutional obligations, concerns over money, or a certain degree of ambivalence towards the plaintiff school districts due to their lack of political power and influence. As was the case with the other research questions, this is a complex issue and there is not one clear answer. As a result, the qualitative interviews proved to be the most effective approach of collecting data explaining why the state might have decided to fight the lawsuit.

Other Issues

In addition to the nine possible reasons why the state decided to fight the *Abbeville* lawsuit, there were other factors that came out of the interviews related to the fourth research question that deserve referencing. In this section these five additional possible factors will be discussed. The data from the interviews will be used to help explain each one.

1. Judge election process in South Carolina.

As was discussed above, South Carolina is the only state in the union that provides the General Assembly exclusive privileges in electing its judges. As a result, all judges appear before the General Assembly every ten years to face reelection. This process makes the judges accountable to the General Assembly for the way they interpret law. The South Carolina election process allows judges to be susceptible to political influence. Ottoman offered this observation, “[y]ou know there are always sidebar conversations, at the country club, on the golf course, and in these social settings, that are off the record. I just do not want to dismiss the role of how we elect judges and how that may have played in some of this.”²⁹⁷ Four participants in this study referred to the election of judges as a possible factor influencing the outcome of the *Abbeville* lawsuit. Ottoman described the unique relationship between the General Assembly and state judges by stating, “judges are scared to do anything that might offend the General Assembly because they have to come back before us for reelection.”²⁹⁸ The state could have decided to contest the lawsuit since it knew the judges that would oversee the trial had to appear before the General Assembly to face reelection.

2. Lack of clear solution.

Black talked about the difficulty in getting a number of educational experts to agree on a core issue within education, let alone a solution. He observed, “There just is no right or wrong or off/on switch for education. You can have 100 people all united with an objective to improving educational achievement and have 100 ideas on how to do it. And you would have very mixed results with respect to any of those individually or a combination of them.”²⁹⁹ With no clear solution to the problems faced by educators, the situation appears nebulous concerning the best direction. As a result, the state may have examined the ambiguity related to educational improvement and used it to justify fighting the *Abbeville* lawsuit.

3. Implications of the lawsuit.

A decision to not fight the lawsuit would place the state in a difficult position and would effectively take the stewardship of education away from the General Assembly. Desk talked about how the state could not allow “the decisions about what steps to [to be taken] out of [the General Assembly’s] hands.”³⁰⁰ Such possible ramifications by not contesting the lawsuit provided sufficient justification for the actions taken by the state. For example, according to Table, “education currently takes between 35 and 50% of the state investment in public services. To accept the contentions of the plaintiffs would have put the state in a position to make an even greater investment...in education.”³⁰¹ This greater investment would require additional funds through taxes or reallocation of existing funds. The state did not want to allow the courts to make such a decision.

4. Actions of the General Assembly.

In table 3.6 the actions of the General Assembly were compared to each of the core arguments of the plaintiffs’ case. This table helped illustrate the fact that the General

Assembly did take steps to improve education during the thirteen-year period while *Abbeville* was waiting to go to trial. Table explained the situation by saying, “if you look over the last decade you can see where the General Assembly has taken action to issue statewide bonds to help with facilities”³⁰² and taken other steps to improve education across the entire state. Based on these actions over the thirteen-year period, the General Assembly “kept saying education is fully funded.”³⁰³ If the state felt education was fully funded then they would fight a lawsuit that argued differently.

5. The inability to reach a compromise.

Ottoman discussed the results of her efforts to get both sides of this lawsuit together talking in the early 1990s to resolve the conflict. “Initially, my efforts focused on resolution, or trying to get us to resolve it. Come to a meeting of the minds rather than dragging this case through the courts. Needless to say, my efforts were futile.”³⁰⁴ Desk, attempting to explain why the two sides failed to engage in meaningful dialogue and failed to reach some semblance of a compromise, said “I was concerned that we were talking a good deal about things that needed to be done at the state level. And we were not talking enough about reforms that needed to take place at the community level. Look at the number of multiple school districts in small communities.”³⁰⁵ Desk, when reflecting upon his experiences as governor while the lawsuit was active, stated, “we have people who want to have one conversation or the other. They want to have the money conversation or they want to have the reforms conversation. But they don’t want to have them together. And my view is you need to acknowledge that both are legitimate.”³⁰⁶

It is difficult to ascertain the influence these other factors had in leading to the state's decision to fight the *Abbeville* lawsuit as opposed to working to resolve it.

However, it appears that the decision to fight the lawsuit stemmed from a multitude of factors.

Conclusion

Black shared this thought related to the *Abbeville* case, "I guess that was our worst nightmare. Ten to fifteen years later we would still be in front of the Supreme Court arguing some point, which we may let be. I hope not."³⁰⁷ Based on the fact that both the plaintiffs and the defendants are preparing to appeal the 2005 ruling after Judge Cooper rules on the motions from both sides to reconsider that ruling, it appears this case is far from finished. It also appears that Black's nightmare of a drawn out case could easily become a reality.

This is unfortunate from many different angles. For example, there are many ways to measure the impact of the *Abbeville* lawsuit. In time, the case has been alive for fourteen years. In educational years, *Abbeville* represents an entire educational generation. A student who entered kindergarten in 1993, when the lawsuit was first filed, would have possibly graduation from high school during the 2005 – 2006 school year.³⁰⁸ The trial could also be measured in dollars spent. In 2006, it was reported the trial had exceeded the \$12 million mark.³⁰⁹ However, one of the most alarming ways to measure the life of *Abbeville* is in lost potential. Table 4.5 illustrates the loss potential by reporting the number of high school dropouts in each of the plaintiff school districts during the 2005 – 2006 school year and multiplying that by the life of the *Abbeville* trial.

Table 4.5: Lost Potential Over the Life of *Abbeville*³¹⁰

School	Number	Percent of	Number of	Number of Dropouts
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District	of Seniors	Graduates	Dropouts	since 1993
Allendale	99	63%	26	364
Dillon 2	244	64%	87	1218
Florence 4	90	73%	14	336
Hampton 2	103	58%	43	602
Jasper	170	81%	32	448
Lee	162	76%	38	532
Marion 7	81	68%	25	350
Orangeburg 3	NA	NA	NA	NA

The average graduation rate for the plaintiff school districts, excluding Orangeburg 3 since no data were available on this school district, is 69% while the state average is 74%. By taking the number of high school dropouts reported during the 2005 – 2006 school year and multiplying it by the fourteen years since *Abbeville* was first filed results in a total number of high school dropouts in the seven school districts of 3,850. How many of those 3,850 people ended up in jail? How many could have been productive members of society if provided an opportunity for a stronger education? How different would those 3,850 people if someone had been able to take a greater interest in them?

However the *Abbeville* case is measured the end result is the same. The trial has been costly in time, resources, and human potential. The state felt like it was in its best interest to fight the lawsuit. Unfortunately, that decision has resulted in a court case that appears to be far from over.

Research Question #5

Historical Introduction: The Role of Shame

Red offered the following insightful observation related to implementing change in South Carolina, “[the state] has to be shamed into action... It sort of drags its feet on everything. I mean...you look at the Citadel and the confederate flag issues. It just had to be dragged along. It had to be shamed into action.”³¹¹ In 1993, a female high school

senior in South Carolina applied for admission into the Citadel.³¹² Knowing that the Citadel only accepted male students, Shannon Faulkner requested her high school counselor remove all reference to gender from the application.³¹³ Faulkner gained admissions into the Citadel based upon her academic performance, but that admission was subsequently revoked once the university realized her gender.

For two years, Faulkner attended day classes but was not considered a cadet while a legal debate regarding her admission to the Citadel raged in courts.³¹⁴ At the heart of this case was the constitutionality of a state funded college denying admissions to a qualified student based on gender. During that two year period Faulkner faced a vast array of harassment for challenging a long standing tradition in South Carolina. The harassment included the vandalizing of her home, verbal threats, and “divine bovine” references to her in the school paper.³¹⁵

After over two years of legal battles Faulkner was finally admitted into the Citadel as the first female student. However, before that actually happened, the issue of gender equity gained national prominence and brought a lot of negative attention to the state. The negative treatment Faulkner received only heightened the degree of negative international attention brought to South Carolina.³¹⁶

Four years after the Citadel issue was resolved, another hot button topic surfaced that further tarnished South Carolina’s image nationally. The NAACP called for a boycott of tourism to South Carolina due to the fact that atop the state capitol flew the confederate battle flag.³¹⁷ The NAACP tried to work with the state behind the scenes to get the flag removed but failed in their efforts. As a result, the boycott was issued.

One of the most embarrassing moments to the state came in January 2000, when Senator Arthur Ravenel “defended the flying of the Southern Cross [and referred] to the NAACP as the ‘National Association of Retarded People.’ He then apologized to ‘retarded people’ for associating them with the NAACP.”³¹⁸ Once again, the national media descended upon South Carolina to cover this story. And, just like the Citadel situation, the portraits of South Carolina were not favorable. By April of 2000 the state senate passed a bill that moved the confederate flag from the top of the capitol building to a pole in the front lawn. By May of the same year the House of Representatives passed the bill as well and the flag was relocated. It is interesting to note that the NAACP has not called off the boycott because of the prominence the confederate flag enjoys in its new location.

In both of these stories South Carolina resisted change until the state was shamed into action. For that reason a documentary film about the deplorable conditions of school facilities within the school districts involved in the *Abbeville* case was entitled *The Corridor of Shame*.³¹⁹ Does South Carolina really need to be shamed before it acts?

Introduction

Before deciding if South Carolina needs to be shamed into action a question regarding the quality of education must be asked. Does South Carolina need to be ashamed of its system of education? The answer to that question depends upon the criterion used to assess the effectiveness of the public schools as well as a person’s individual experiences. As with any system of education, South Carolina appears to excel in certain areas and struggle in others. However, if the representatives of the plaintiff

school districts were asked if the state should be ashamed of its system of public education the answer would be a resounding “Yes.”

The final research question guiding this study reads, “What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the lawsuit react to the decision?” To answer this question the ruling will be presented, the interview data summarized, and a detailed discussion of the various points made by the participants presented.

The 2005 Ruling

After 102 days, over 80 testimonies, and roughly 4,400 pieces of evidence submitted to the court, the *Abbeville* trial ended on December 9, 2004.³²⁰ Judge Thomas J. Cooper took over one year to craft his thorough ruling on the case, which was handed down on December 29, 2005.³²¹ After nearly 160 pages dedicated to reviewing the lengthy trial, Judge Cooper posed a core question to *Abbeville* and offered his answer. “Have the Defendants provided the children in the Plaintiff Districts the opportunity to acquire a minimally adequate education? I find they have not.”³²² Judge Cooper supported this conclusion through careful analysis of the PACT scores for the plaintiff districts. Judge Cooper also examined the plaintiffs’ poverty levels and came to this conclusion, “when those two factors [PACT scores and poverty] come together so dramatically as they do in the case of the Plaintiff Districts, this Court is led to the conclusion that the children of the Plaintiff Districts are not receiving the opportunity to obtain a minimally adequate education.”³²³

One could assume, after such a bold statements in favor of the plaintiffs, that the rest of the ruling would prove to be a sweeping victory for the rural school districts,

however such was not the case in *Abbeville*. Judge Cooper's final ruling took each key point of the plaintiffs' case and offered the following opinion:

"The Court concludes that the instructional facilities in the Plaintiff Districts are safe and adequate to provide the opportunity for a minimally adequate education as defined in *Abbeville County*.

The Court concludes that the South Carolina Curriculum Standards at the minimum encompass the knowledge and skills necessary to satisfy the definition for a minimally adequate education as set out in *Abbeville County*.

The Court further concludes that the South Carolina system of teacher licensure, including the minimum passing scores on Praxis I and the different Praxis II tests, is sufficient to ensure at least minimally competent teachers to provide instruction consistent with the curriculum standards.

The Court further concludes that the inputs into the educational system, except for the funding of early childhood intervention programs, are sufficient to satisfy the constitutional requirements.

The Court further concludes that the constitutional requirement of adequate funding is not met by the Defendants as a result of their failure to adequately fund early childhood intervention programs.

Finally, this Court concludes that the students in the Plaintiff Districts are denied the opportunity to receive a minimally adequate education because of the lack of effective and adequately funded early childhood intervention programs designed to address the impact of poverty on their educational abilities and achievements."³²⁴

Judge Cooper ruled that the opportunity for a minimally adequate education did not exist in the plaintiff school districts due to the lack of an early childhood intervention program that would overcompensate for the lack of intellectual stimulation in the typical poor child's home. Based on the high poverty rates in the plaintiff school districts and their low PACT scores, Judge Cooper ruled that poverty was negatively impacting students' opportunity to learn. As a result, the state was ordered to develop a program to address the early childhood issues.

The state immediately decided to develop a four-year pilot program to study the effectiveness of a pre-kindergarten program. The General Assembly dedicated \$24 million to this pilot study and placed pre-kindergarten programs in each of the eight lead school districts in the *Abbeville* lawsuit. On July 13, 2006, the State Department of Education held a meeting related to the creation of the pre-kindergarten programs in the eight school districts. Two weeks later these school districts were required to submit their application to run a pre-kindergarten program to both the State Department of Education and the Department of Social Services.³²⁵ Needless to say, there was a lot to do in that two-week window.

The state estimated the cost of the program at \$3,077 per child.³²⁶ The state also made available grants to the school districts for equipment expenses that could not exceed \$10,000. Before the school districts could operate a pre-kindergarten program certain steps had to be taken. First, classroom space had to be secured. This proved difficult since inadequate facilities were one of the concerns raised in the *Abbeville* case. Ironically, the state's remedy to Judge Cooper's 2005 ruling required the eight school districts to do more with the already limited space that they had, which was reminiscent

to the issues in the early 1990s related to fringe benefits and pupil transportation that directly led to the lawsuit being filed. An example of how limited the school districts were with space was provided by Dillon 2. Those charged with implementing the pre-kindergarten program in Dillon 2 identified 280 students who qualified for their program, but could only offer it to 140 students based on space limitation.³²⁷

In addition to classroom space, the school districts had to meet various requirements to obtain a Department of Social Services license authorizing the pre-kindergarten program. To meet these requirements, the school districts had to have a fire inspection, sanitation inspection, fingerprint teachers and administrators, pay various fees, provide extensive documentation on those who would work with the students, and provide training to teachers and administrators where the pre-kindergarten programs would be housed.³²⁸ All of this took time and money.

Aspen offered this commentary on the state's action related to the *Abbeville* ruling, "They said we had to serve every child who was free and reduced lunch or met federal guidelines. That means I have to come up with facilities... I still have to go out and find teachers... We are about \$18,000 short on the money...no about \$30,000 short to run the program based on the money they gave us."³²⁹ The fact that the state failed to fund the early childhood program adequately was echoed by Pine, Spruce, and Mirror. Once again, there is a degree of cruel irony in the fact that the eight school districts go to court in the hopes that South Carolina will fund education better and the end result of the effort is another under funded mandate.

Ottoman offered a wonderful assessment related to the actions of the General Assembly, "my colleagues, being the short-sighted people that they are, jumped on the

ruling, ‘Well, that means we need four-year old kindergarten.’ Well, hell, by the time the kids go to four-year-old kindergarten it is too late, almost. The formative years are zero to three.”³³⁰

In commenting on the early childhood component of Judge Cooper’s ruling, many people wondered about its completeness. For example, Chair wondered about “the students after grade three.”³³¹ Were they fine academically? Did they have the opportunity for a minimally adequate education, assuming the pre-kindergarten gap was eliminated? A number of people talked about Judge Cooper’s ruling “splitting the baby”³³², or trying to avoid favoring one side over the other. If that was Judge Cooper’s intention it is easy to understand why virtually everyone who participated in this study, regardless of what side of the case they were on, expressed frustration with the ruling.

Summary of Interview Data

As for the reactions to the ruling, there were many different types. In this section the most frequent reactions will be presented and disaggregated by the participant’s affiliation to the case.

Ten people opening expressed frustration over the 2005 ruling. The frustration transcended the affiliation the person had with the case. The ruling quite possibly served to unite all in their displeasure of it. Of those ten people who expressed frustration with the 2005 ruling, six sided with the plaintiffs, one sided with the defendants and three were undecided or unclear.

Seven people made comments related to the 2005 ruling suggesting that it was passive or that it did not go far enough. These comments suggested that the ruling was on the right track but did not do all that it could have done to validate one side or the other.

Of the seven people to express this thought, four sided with the plaintiffs, one sided with the defendants, and two were undecided or unclear.

Eight people were appalled at the amount of money spent to fight this battle and reflected on how the money could have been better spent on children. These sentiments viewed the trial as a necessary evil since the General Assembly failed to fund education appropriately. Based on these opinions, it is not surprising to find that six of the eight sided with the plaintiffs and two were undecided or unclear.

Seven people talked about how the 2005 ruling fell short of their hopes and that they anticipated the case being appealed to the state Supreme Court. Five of these seven sided with the plaintiffs and two with the defendants. It does seem likely that once Judge Cooper rules on the motions to reconsider the ruling, filed by both the plaintiffs and defendants, that the ruling will be appealed.

Six participants voiced frustration with the remedy drafted by the General Assembly in reaction to the 2005 ruling. Interestingly enough, all six who voiced this frustration sided with the plaintiffs. This suggests that those who are living with the issues raised in *Abbeville*, the professional educators, have a unique perspective that few others have related to educating poor children.

These summaries begin to explain how people reacted to the 2005 ruling. With the fifth research question, more so than any of the other four, there appears to be greater consensus on the answers given. However, as is typically the case when contrasting qualitative and quantitative data, the latter fails to provide the deep understanding that the former can offer.

Universal Disappointment and Frustration

As reported above, the degree of frustration with the 2005 ruling was widespread and expressed by people in all three of the subgroups. No one group was frustrated with the ruling, rather it appears that frustration was universal. In this section the frustration expressed will be explored in greater detail to better understand what aspects of the ruling were frustrating.

It is interesting to listen to the comments of the attorneys for both sides related to the ruling. Black, one of the defendants' lead attorneys, said, "I am disappointed. I think the order is so good in so many respects and so consistent with our view of the framing of the issue and then it kind of jumps off at the end."³³³ Black thought the defendants were winning until the judge changed directions right at the end.

By contrast, Red, one of the lead attorneys for the plaintiffs, said, "[n]obody likes the ruling. It takes chunks of their case and it takes chunks of our case and it puts them together... In the end, I view it as a win."³³⁴ It is odd to talk of the trial in terms of winning or losing when students are the ultimate winners or losers, depending on the results of this case and the actions those charged with developing an educational system that prepares students to succeed in the 21st century.

Rabbit observed that the ruling did not appear to go far enough when he said, "the opportunities that a few of us have received have not been given to everybody."³³⁵ In other words, the 2005 ruling and the General Assembly's remedy only address four-year-old early childhood education. Pine recognized the importance of early childhood education and intervention in closing the achievement gap, but "[w]hat they do not understand is that it just gets compounded with the older ages. And that is where you start losing them. Once they reach that age, the [key] decision [is] whether they are going to

come [to school and apply themselves academically] or [not come to school and] fall farther behind. Some [students] are so far behind they just drop out.”³³⁶ The ruling did not address those students who were already in the system and provided no additional support for those students who receive the early childhood education as they progress academically.

Some of the disappointment and frustration expressed about the 2005 ruling focused on specifics of the case. For example, Juniper was one of three people to pose the following question, “How could the court rule that facilities were minimally adequate?”³³⁷ Purple could not believe the judge deemed the quality of teachers in the plaintiff school districts minimally adequate.³³⁸ When considering the amount of evidence that was presented in the trial related to the facilities and teacher recruitment and retention efforts, the fact that Judge Cooper deemed them minimally adequate must have been offensive to some.

Rocker voiced her frustration with the case when she said, “I am frustrated with how long these cases take.”³³⁹ It does seem to be a reasonable reaction toward *Abbeville* since the case has taken over fourteen years to adjudicate, and there is no end in sight for it. School finance cases do take a long time to resolve.

Two people expressed disappointment with the General Assembly and their perceived inactions that brought on the trial. Maple expressed his frustration by saying, “I am very disappointed and I am disappointed in our state leaders. They just pay lip service to education and do not stand up.”³⁴⁰ Rabbit expressed disappointment that nobody took the minimally adequate ruling from the state Supreme Court and saw that as an invitation to “do something”³⁴¹ for education beyond the constitutional minimum.

Maple compared the 2005 ruling to “a divorce case and neither side was very happy. If it was a divorce case the state got to keep the house, the car, the beach house, and [the plaintiffs] got to keep the kids with no alimony.”³⁴² Purple was more somber in her assessment of the 2005 ruling, “[i]t is extremely frustrating to know that we are perpetuating poverty and ignorance and an overcrowded penal system.”³⁴³

Although the frustration or disappointment expressed differed from person to person, virtually everyone felt “let down”³⁴⁴ from some aspect of the 2005 ruling. The detailed examination of the various types of frustration and disappointment help explain how people reacted to the 2005 *Abbeville* ruling.

Minimally Adequate Restrictions

Much of the frustration or disappointment regarding the ruling was directed at the minimally adequate ruling from the state Supreme Court. In this section the various reactions to the 2005 ruling that centered on the minimally adequate phraseology will be discussed.

Desk commented on the minimally adequate ruling, “[t]he problem was the constitution did not set the bar at a level that would have allowed [the plaintiffs] to prevail in the lawsuit. I mean, minimally adequate is such a low threshold. It’s an inappropriate threshold, but it is the law.”³⁴⁵ It is not ethically correct for a state to aim for a minimally adequate system of education, but according to the state constitution, that was all the General Assembly was required to provide its citizenry. Orange offered this explanation, “[y]ou have to look at the constitution of South Carolina, which says that the state will provide for a free school system. There is nothing”³⁴⁶ in the education clause that obligates the General Assembly to do more than that.

Pine expressed his frustration with the limits on the lawsuit created by the minimally adequate ruling. He said, “to me it doesn’t say much about our educational system when we are measuring everything in terms of minimal. The very basic...the ability to read and write and do numbers on the 6th grade level... That is just above illiterate.”³⁴⁷ Despite its limitations, the minimally adequate ruling was consistent with wording of the education clause. This fact did not stop Orange from stating that a minimal adequate standard is “only going to produce a minimal ruling.”³⁴⁸

That is not to suggest that minimally adequate ought to be the standard the General Assembly should aim for, rather, it is all that the state is required to do by the constitution. Ottoman offered this assessment of Chief Justice Finney, the author of the minimally adequate ruling, “in my opinion, it shows that the Chief Justice knew this state, knew what would work, and knew what he would be able to get away with legally and constitutionally.”³⁴⁹ Chief Justice Finney’s minimally adequate ruling succeeded in keeping the case alive despite the precarious political tightrope the state Supreme Court had to walk in expressing this opinion. Rabbit offered this assessment concerning the Supreme Court’s definition of the education clause, “the idea that the state has an obligation is still alive.”³⁵⁰ There are four justices on the state Supreme Court, so for an opinion to become law it must be endorsed by at least three of the four justices. That is not always an easy proposition and when the minimally adequate ruling was handed down one of the four justices dissented.³⁵¹

Rabbit interpreted the minimally adequate ruling as the state Supreme Court saying, “to South Carolina, ‘We have a dilemma. Let’s go out and do the best we can to resolve that dilemma.’”³⁵² It was as if the ruling written by Chief Justice Finney

highlighted a significant educational issue and attempted to keep the door open for those in power to address it. Rabbit also speculated that Chief Justice Finney was hopeful the ruling would, “get some movement where the divergent political opinions would come together.”³⁵³ In the end, Rabbit viewed the state Supreme Court’s actions as sending political leaders “with a message” that there is a problem with education that transcends the constitution.³⁵⁴ Rabbit also argued the minimally adequate ruling provided the state the opportunity “to take the high road” and fix these problems outside of the courtroom.³⁵⁵

Although many have been critical of the minimally adequate ruling from the state Supreme Court, the fact remains the opinion kept the *Abbeville* case alive. In addition, the ruling sent a message to the state that there were problems with the system of education that might not be best resolved in the courtroom. Finally, the ruling provided the state and educational leaders the opportunity to work on a resolution. Unfortunately, to date, that type of dialogue has not occurred.

A Lose-Lose Ruling

Other reactions to the 2005 ruling classified it as a losing proposition for everyone involved. The state lost because it had to fund an early childhood education program. The plaintiff school districts lost because they did not receive all of the additional funding they sought from the state to provide their students a quality education. And, ultimately, certain students lost because they receive an inferior education based on geography. In this section additional reactions to the 2005 ruling will be presented and the actions of Judge Cooper will be compared to those of Chief Justice Finney.

Rocker referred to the 2005 ruling as “fairly passive.”³⁵⁶ The justification for this assessment stemmed from the impact it had on the educational climate in South Carolina. “The only thing the General Assembly pulled out of that ruling was that it needed to invest in early childhood education. And, quite frankly, the state was already positioned to do that.”³⁵⁷ According to Rocker, the General Assembly was already looking at instituting an early childhood pilot program when the ruling came down in 2005. The passivity of the ruling comes from the fact that, despite Judge Cooper stating that the state was not providing an opportunity for a minimally adequate education, the ruling had no discernable impact on education in the state.

Blue thought Judge Cooper was trying to, “split the baby. He appeared to want to create a win-win situation for everyone involved in the case. The ruling did not go far enough.”³⁵⁸ What would a win-win situation look like? It seems reasonable that everyone would walk away from the experience content. The ruling appears to say the plaintiffs won the case, but then side with the defendants on virtually every point. Black observed, “I think the court basically agreed with our conceptual structure of the issue, and then sort of jumped off the train at the last minute.”³⁵⁹

Some took a more positive view of the 2005 ruling. Purple argued, “the ruling had benefits for both sides of the case.”³⁶⁰ Aspen argued that the ruling gave “both sides a bone. The state got the bigger bone and the plaintiffs got the smaller bone.”³⁶¹ However, the benefits, or bones, from the ruling proved unsatisfactory for virtually everyone involved. Rocker called the ruling “politically comfortable... I don’t think anyone has won from [school finance] lawsuits. I do not see deep change or, at least, massive change that is beyond the current political will.”³⁶²

There is another possible angle to consider the 2005 ruling. Desk is the only person to participate in this study who expressed open support for the 2005 ruling. He said, “I chuckle a little bit because, in the end, I probably was the closest to what the judge said. He basically said, ‘You (the state) started on the right path but you have not gone far enough.’”³⁶³ Judge Cooper avoided telling the state what it needed to do. Why? Was he too passive as some have suggested? Did he miss the facts presented in the case? Or, is it possible that Judge Cooper and Chief Justice Finney had similar objectives with their respective rulings? Chief Justice Finney sought to present a ruling that would encourage state leaders to enter into a dialogue concerning public education that went well beyond the constitutional mandates, since those mandates were so low. Six years later, it seems possible Judge Cooper may have been trying, once again, to provide the state officials an opportunity to improve education. If either court had prescribed remedies on the state, it seems likely the General Assembly would have resisted change every step along the way. If it was the intention of Judge Cooper to give the state another opportunity to go beyond the constitutional minimum related to education, then the 2005 ruling makes more sense. Red offered this thought on Judge Cooper, “I think he thought that, ‘If I could get them started right then we (the state) would take a huge step forward.’”³⁶⁴

In considering the 2005 ruling, as well as the previous ones related to *Abbeville*, no court is endorsing the quality of the education offered in the state of South Carolina. Rather, each court is looking at the legal question and the limits of the state constitution and practicing judicial restraint. Though they might want to do more for public education, the courts are adhering to the wording of the state constitution. If the judges who have

worked on this case have attempted to encourage the state to enter into a dialogue centered on public education, then the 2005 ruling can still be a win-win for everyone involved, if those conversations take place.

The Moral Obligation Related to Education

A majority of the frustration or disappointment associated with the 2005 ruling surfaced because of the moral components of education. Realizing that education is the great equalizer in American society, it becomes difficult to reconcile a system of schools that favors one group of students over another based on a capricious factor such as skin color, socio-economics, or geography. In this section the moral dimensions of the *Abbeville* case will be presented to better understand how people close to the case reacted to the 2005 ruling.

Red offered this assessment of the 2005 ruling, “nobody is happy. And, I really think there are children in this state who were left out of the ruling. [The judge] overlooked large chunks of the student population.”³⁶⁵ The ruling does not address the needs of those children older than eight years old, as if they were without issues. Pine observed, “[the lawsuit] has cost millions of dollars for the state and the school districts. That money could have been spent a lot better in the schools.”³⁶⁶ The money spent on the lawsuit by both the plaintiffs and the defendants could have done a lot for the rural schools. Red bluntly stated, “[w]e ought to be ashamed that we allow two South Carolinas to exist.”³⁶⁷

However, the moral issues related to the *Abbeville* case did not come out in the trial. Why? Desk said, “I always looked at the question of the lawsuit as one where the court was asked if the state is meeting its constitutional obligations and not its moral

obligations.”³⁶⁸ That statement only serves to emphasize the fact that the courtroom is not the best place to have a moral debate related to education when the state’s education clause is devoid of any quality standard. This helps explain why Rabbit hoped, “[the state] would have recognized that [it] had an obligation to provide and promote the best quality of education possible.”³⁶⁹

The moral frustrations expressed related to the 2005 ruling centered on the fact that the courtroom debate did not delve into the issue sufficiently. However, it appears few took the time to determine if the courtroom was the right place to have the discussion on educational issues. Desk offered this assessment of the entire lawsuit, “we missed an opportunity to have this statewide conversation about what we could do without court intervention to improve education for all of our children.”³⁷⁰ Hopefully South Carolina has not missed the opportunity for this statewide discussion; rather the state has postponed the conversation. The systemic changes that people were hoping would come out of the lawsuit might only come when all interested parties sit down together and discuss educational issues in detail.

Additional Reactions

In addition to the reactions already discussed there were five others that merit mentioning. These five reactions will be discussed in this section.

1. An appeal is imminent.

Mirror suggested the 2005 ruling fell significantly short of addressing the needs of the students in the rural school districts.³⁷¹ As has been mentioned, there were so many aspects of the plaintiffs’ case that went unaddressed or inappropriately overlooked by the judge. Maple offered this assessment of the 2005 ruling, “[it] does not do enough and it is

not permanent. The whole infrastructure of education needs permanent strength.”³⁷² The ruling tends to lightly touch the surface of the issue related to education in the rural school districts and not get to the core points of discussion. As a result of this failure on Judge Cooper’s part to get to the core issues, Pine offered this comment, “we still have not got there. And I feel like we will move on to the state Supreme Court.”³⁷³ Red said, “I think we probably have an obligation to appeal if that is what our clients want us to do.”³⁷⁴ Right or wrong, the case is likely headed back to the state Supreme Court once Judge Cooper rules on the motions to reconsider his 2005 ruling.

2. Money.

As was reported earlier, it is estimated that over \$12 million³⁷⁵ has been spent on the *Abbeville* lawsuit. That is a lot of money that could have been used to help education in many different ways. Aspen shared this comment related to the money spent on *Abbeville*, “I would appeal [the ruling] on the one hand, but then again, I do not like spending the taxpayers’ money this way.”³⁷⁶ However, Aspen concluded that the lawsuit is important and that the school districts are in it for the long haul.³⁷⁷ Another interesting comment related to the money came from Purple, “I was appalled that the state balked and they spent millions of dollars on attorneys to fight against providing districts with what they need and support, not just money but education support, not just what our constitution says, but also what is right.”³⁷⁸ A lot of money was spent to fight the case in a courtroom and not enough money and time was dedicated to doing what is right for education.

3. Problems with litigation.

The problem with school finance court cases, in particular, is they take a significant amount of time to resolve. For example, *Abbeville* has taken thirteen years to reach the point it is at currently and, unfortunately, it appears the lawsuit is far from being completely resolved. Desk offered this insightful comment that explains the potential pitfalls of litigation:

“And my own view was, as I told people from time to time, if you want a court solution we are talking about something that can take ten to fifteen years. Let’s say the court rules that it is not minimally adequate, how many times are you going to bounce back to the Supreme Court in determining whether or not the state has crafted an adequate plan? Well, long enough that if you put your shoulder to it, you could get something done legislatively. I have always been skeptical of court ordered solutions because I have seen the games that go on to impede the implementation of court ordered solutions.”³⁷⁹

Juniper also expressed concern with the litigation process, “I am frustrated with the fact that we have to litigate these types of issues. We ought to have the commitment as a state to do what is right and not bog down in petty discussions over constitutional obligations.”³⁸⁰ The implication of these two comments is that litigation is not the most effective way to bring about change. If possible, a dialogue between the two sides will result in more meaningful, quicker, and less expensive change. However, those benefits are predicated upon both sides demonstrating a willingness to talk with one another.

4. The gains of the lawsuit.

Black recognized the 2005 ruling did state that the opportunity for a minimally adequate education does not exist in the plaintiff school districts. However, he did not

agree with the ruling and anticipated an appeal from the state.³⁸¹ Blue called the 2005 ruling a narrow victory for the plaintiffs, “at best. The judge missed an opportunity to make a difference for the plaintiffs’ districts.”³⁸² However, the judge’s responsibility is to interpret law and not to “make a difference for the plaintiffs’ districts.” Blue also offered this observation related to the ruling, “I guess the eventual (2005) ruling from the trial judge is light years from where this started.”³⁸³ This point is significant. Judge Cooper dismissed the case in 1996. By 2005, Judge Cooper ruled that the opportunity for a minimally adequate education did not exist. That is quite a change of position in a few years time.

Other gains related to the lawsuit, according to Pine, were many. He argued, “we will get a little more than we would have got if we had not filed this lawsuit.”³⁸⁴ The direct impact of the lawsuit might be limited to the early childhood programs, but the influence of the lawsuit on education does not stop there according to Red. She stated, “I think the lawsuit may have had something to do with the state passing a bond in 1999 for building construction... So, even if we do not win the lawsuit, I think by exposing these issues and having them in the open it sort of prompted the right response.”³⁸⁵

Conclusion

The reactions to the lawsuit were numerous and widespread. They ranged from frustration and disappointment to a hope that the case would still positively impact education. It does not appear that many in the state, regardless of the side of the lawsuit they supported, were willing to engage in conversations on education. That is unfortunate, since both the 1999 and the 2005 rulings could have been invitations to the state to engage in a meaningful conversation related to their moral obligations toward

education. Chair offered this observation, “I do think it is good for the state to have to deal with this type of an issue.”³⁸⁶

Conclusion

The purpose of this chapter was to use the interview data to answer the five research questions. The answers provided for each of the research questions offers a more complete picture of *Abbeville*. However, as is the case with any quest for understanding, this in-depth analysis of *Abbeville* has produced more questions than answers. These questions, along with a more thorough conclusion, will be presented in Chapter Five.

Endnotes

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- ¹ Robert E. Botsch, *Briggs v. Elliott* (unpublished document, 1999), 1. Retrieved at: <http://www.usca.edu/aasc/briggsvelliott.htm> on January 30, 2007.
- ² *Ibid.*
- ³ Lynn T. Brown, *Brown v. Board of Education and School Desegregation: An Analysis of Selected Litigation* (Unpublished dissertation at Virginia Polytechnic Institute and State University, April 2004), 35.
- ⁴ *Ibid.*, 55 – 56.
- ⁵ Botsch, *supra* note 1, 1.
- ⁶ *Ibid.*, 1.
- ⁷ *Ibid.*, 2.
- ⁸ *Ibid.*, 2.
- ⁹ *Ibid.*, 2-3.
- ¹⁰ *Ibid.*, 3.
- ¹¹ Interview with Ms. Ruby Red (pseudonym) on November 27, 2006, 9.
- ¹² *Ibid.*
- ¹³ Jackson L. Flanigan and Michael D. Richardson, *South Carolina Educational Finance* (Acton, MA: Copley Publishing Group, 1992), 2. In *Abbeville County School District v. The State of South Carolina, et al.* (Abbeville 2005), 3rd Judicial Circuit, case number 93-CP-31-0169 it is reported that the state contributes roughly 50%, the local school district contributes 40% and the federal government accounts for 9%, 26.
- ¹⁴ Flanigan & Richardson, *supra* note 13, 3-5.
- ¹⁵ *Ibid.*, 5-7.
- ¹⁶ *Ibid.*
- ¹⁷ *Ibid.*, 9.
- ¹⁸ The South Carolina Educational Finance Act of 1977 (EFA), §21, 257.
- ¹⁹ Interview with Ruby Red, *supra* note 11, 10-11.
- ²⁰ EFA, *supra* note 18, 259.
- ²¹ *Ibid.*
- ²² Flanigan & Richardson, *supra* note 13, 29 represent the equalizing formula in the following manner, “District Allocation = (District Weighted Pupil Units x Base Student Cost) – (State Weighted Pupil Index x Base Student Cost x Index x .3).”
- ²³ *Ibid.*
- ²⁴ The South Carolina Education Improvement Act (EIA), § 59, 440.
- ²⁵ Flanigan & Richardson, *supra* note 13, 85.
- ²⁶ EIA, *supra* note 24, the 25 programs were increase high school diploma requirements, advanced placement courses, gifted and talented program, vocational education equipment, critical teaching needs, handicapped student services, high school exit exam, early childhood program, child development, basic skills-remedial instruction, teacher salary increases, adult education, school employer contributions, principal incentive program, teacher incentive program, in-service teacher training, assist teachers with paperwork, competitive teacher grants, tuition reimbursement for teachers, administrator apprenticeships, principal’s salary, competitive school grants, school incentive reward program, school building aid, and effective partnerships.

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- ²⁷ Flanigan & Richardson, *supra* note 13, 86
- ²⁸ Interview with Dr. Penny Purple (pseudonym) on December 15, 2006, 5.
- ²⁹ EIA, *supra* note 24, 444.
- ³⁰ Eldred E. Prince, Jr. Pee Dee River. In *The South Carolina Encyclopedia*, Walter Edgar (ed) (Columbia, SC: The University of South Carolina Press, 2006), 708.
- ³¹ The eight counties are: Clarendon, Darlington, Dillon, Florence, Lee, Marion, Marlboro, and Williamsburg. I found it interesting that these rural counties would have multiple school districts, and this phenomenon is seen by many as a holdover from the segregation era. It appears to go contrary to convention wisdom that would advocate for consolidated school districts and the preservation of limited resources.
- ³² Interview with Dr. Mitchell Maple (pseudonym) on December 8, 2006, 1-2.
- ³³ Interview with Mr. Peter Pine (pseudonym) on December 8, 2006, 2.
- ³⁴ Interview Mitchell Maple, *supra* note 32, 2.
- ³⁵ *Ibid*, 3.
- ³⁶ *Ibid*, 3-4.
- ³⁷ Interview Peter Pine, *supra* note 33, 1.
- ³⁸ Interview with Dr. Oscar Orange (pseudonym) on November 27, 2006, 1.
- ³⁹ As noted earlier, Mitchell Maple is a pseudonym.
- ⁴⁰ Unpublished manuscript related to meeting in the Pee Dee Education Center prior to the lawsuit, 1.
- ⁴¹ Interview Mitchell Maple, *supra* note 32, 5.
- ⁴² Unpublished letter by John E. Wall (Pee Dee Regional Education Center, October 19, 1993), 1. The opening paragraph of the letter reads, “As many of you are aware, for the past four or five years many of the poorer school districts have appealed to the General Assembly to distribute more funds (e.g. fringe benefits) on the EFA formula. Even after taxing themselves at higher rates than wealthier districts, our local districts have less to spend per pupil. While the Legislature did begin to phase in EFA funding of fringe benefits, this effort has now stalled and is likely to face increased opposition in the next session. We are now convinced (even some legislators acknowledge) that the General Assembly will not significantly change the state funding system without a judicial order.”
- ⁴³ *Ibid*.
- ⁴⁴ *Abbeville* (2005), *supra* note 13, 2.
- ⁴⁵ Interview Oscar Orange, *supra* note 38, 6.
- ⁴⁶ Interview with Governor Derek Desk (pseudonym) on December 14, 2006, 1.
- ⁴⁷ Of the 86 school districts in 1993, 40 agreed to join the suit.
- ⁴⁸ Interview with Mr. Bobby Blue (pseudonym) on December 14, 2006, 2.
- ⁴⁹ Unpublished document, *supra* note 40, 2. The actual quote begins, “It is their hope that the legislature...”
- ⁵⁰ Interview with Representative Olivia Ottoman (pseudonym) on December 14, 2006, 10.
- ⁵¹ *Ibid*, 9.
- ⁵² *Quick Facts: Education in South Carolina* (Columbia, SC: Department of Education, 2006), 2. This information is also available on South Carolina’s Department of Education website: <http://www.ed.sc.gov>. Interview 11, *supra* note 32, 295-297.
- ⁵³ Interview Mitchell Maple, *supra* note 32, 4.

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- ⁵⁴ Interview with Dr. Julie Juniper (pseudonym) on December 28, 2006, 4.
- ⁵⁵ South Carolina Constitution, article XI §3.
- ⁵⁶ Interview with Ms. Tiffany Table (pseudonym) on November 28, 2006, 2.
- ⁵⁷ *Ibid*, 6.
- ⁵⁸ Interview with Judge Rory Rabbit (pseudonym) on November 13, 2006, 1.
- ⁵⁹ Interview with Ruby Red, *supra* note 11, 7.
- ⁶⁰ Interview with Dr. Sally Spruce (pseudonym) on December 8, 2006, 5-6.
- ⁶¹ *Ibid*, 6.
- ⁶² Unpublished manuscript, *supra* note 40, 1.
- ⁶³ Interview with Oscar Orange, *supra* note 38, 5.
- ⁶⁴ Interview with Dr. Rhonda Rocker (pseudonym) on December 15, 2005, 3-4.
- ⁶⁵ Interview with Ruby Red, *supra* note 11, 2.
- ⁶⁶ For a complete list of the questions asked in the interviews, please refer back to chapter two.
- ⁶⁷ Interview with Olivia Ottoman, *supra* note 50, 6.
- ⁶⁸ Interview with Peter Pine, *supra* note 33, 3-4.
- ⁶⁹ Interview with Julie Juniper, *supra* note 54, 2-3.
- ⁷⁰ EFA, *supra* note 18, 250.
- ⁷¹ Flanigan and Richardson, *supra* note 13, 27. The base student is assigned a 1.0 and other types of students receive different weightings based on their needs in comparison to the base student.
- ⁷² Interview with Julie Juniper, *supra* note 54, 3.
- ⁷³ Interview with Peter Pine, *supra* note 33, 10.
- ⁷⁴ Interview with Governor Charlie Chair (pseudonym) on December 8, 2006, 3.
- ⁷⁵ Ruby K. Payne, *A Framework for Understanding Poverty* (Highland, TX: Aha! Press, 1996), 34.
- ⁷⁶ Flanigan and Richardson, *supra* note 13, 19.
- ⁷⁷ Interview with Ruby Red, *supra* note 11, 14.
- ⁷⁸ Interview with Tiffany Table, *supra* note 56, 4.
- ⁷⁹ Interview with Penny Purple, *supra* note 28, 11.
- ⁸⁰ Interview with Ruby Red, *supra* note 11, 11.
- ⁸¹ Interview with Olivia Ottoman, *supra* note 50, 21.
- ⁸² Interview with Ms. Mandy Mirror (pseudonym) on November 13, 2006, 2-3.
- ⁸³ Interview with Rory Rabbit, *supra* note 58, 8.
- ⁸⁴ Interview with Penny Purple, *supra* note 28, 3-4.
- ⁸⁵ Interview with Mandy Mirror, *supra* note 82, 4.
- ⁸⁶ Interview with Tiffany Table, *supra* note 56, 5.
- ⁸⁷ *Quick Facts*, *supra* note 52, 4.
- ⁸⁸ *Ibid*, 5.
- ⁸⁹ The United States Department of Education, *The No Child Left Behind Act of 2001*. Available at: <http://www.ed.gov/nclb/overview/importance/edlite-index.html>. Last viewed February 28, 2007.
- ⁹⁰ Interview with Penny Purple, *supra* note 28, 3.
- ⁹¹ Interview with Rory Rabbit, *supra* note 58, 2.
- ⁹² Interview with Mr. Bud Black (pseudonym) on November 28, 2006, 6-7.

⁹³ Ibid, 7.

⁹⁴ Interview with Julie Juniper, *supra* note 54, 1-2; Interview with Derek Desk, *supra* note 46, 11-12; and interview Bobby Blue, *supra* note 48, 3.

⁹⁵ National School Boards Association, *Adequacy Litigation Table* available at: <http://www.nsba.org/> and National School Boards Association, *School Finance Litigation Table*, available at the same website. The search for a national trend was limited to 1989, the year of the *Rose* ruling in Kentucky, which ushered in the adequacy argument, and 1993, the year the *Abbeville* case was filed. The thirteen states that had cases ruled on during that time were: Alabama, Idaho, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, Ohio, Tennessee, and Wisconsin. The four states where the state won the cases were Maryland, Minnesota, Nebraska, and Wisconsin. It should be noted that Maryland and Nebraska were equity suits.

⁹⁶ Interview with Derek Desk, *supra* note 46, 12.

⁹⁷ Interview with Ruby Red, *supra* note 11, 17.

⁹⁸ Interview with Tiffany Table, *supra* note 56, 5.

⁹⁹ Interview with Peter Pine, *supra* note 33, 11.

¹⁰⁰ James A. Rogers, *Theodosia and Other Pee Dee Sketches* (Columbia, SC: The R. L. Bryan Company, 1978), xvii. In this book Mr. Rogers explores the different spellings of the region in question, which include Peedee, Pedee, and Pee Dee. For the purpose of this text, I will defer to the extensive research Mr. Rogers did on this subject and use the spelling in the title of his book.

¹⁰¹ John M. Gregg, *Early Pee Dee Settlers* (Bowie, MD: Heritage Books, Inc., 1993), xv.

¹⁰² Prince, *supra* note 30, 708.

¹⁰³ Prince, *supra* note 30, 708; Gregg, *supra* note 101, xv.

¹⁰⁴ Prince, *supra* note 30, 708.

¹⁰⁵ Ibid, 708.

¹⁰⁶ Ibid, 708-709.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid, 709.

¹⁰⁹ Rogers, *supra* note 100, xx.

¹¹⁰ Rogers, *supra* note 100, xvi-xix. Rogers presents numerous theories as to the specific boundaries to the region, ranging from as few as four current counties to as many as twelve. The twelve counties are: Chesterfield, Marlboro, Darlington, Lee, Sumter, Clarendon, Florence, Dillon, Marion, Williamsburg, Georgetown, and Horry Counties.

¹¹¹ *Poverty Statistics: Selected Counties in the Pee Dee Region of South Carolina*, available at:

http://fmucenterofexcellence.org/fmu/pdfs/PovertyStatistics_USCensusBureau.pdf. Last viewed on February 21, 2007.

¹¹² Ibid.

¹¹³ Interview with Oscar Orange, *supra* note 38, 7.

¹¹⁴ Ironically enough, the school district to drop out of the lawsuit was Abbeville. It was decided to keep the name of the case since it had already been filed.

¹¹⁵ Unpublished manuscript, *supra* note 40, 1.

¹¹⁶ Unpublished letter, *supra* note 42, 1.

¹¹⁷ The reduction occurred as a result of district consolidation and one school district dropping out.

¹¹⁸ *Quick Facts*, supra note 52, 5. The three major population centers for South Carolina are Columbia, Charleston and Spartanburg.

¹¹⁹ Interview with Rhonda Rocker, supra note 64, 3.

¹²⁰ Interview with Oscar Orange, supra note 38, 3.

¹²¹ Interview with Bobby Blue, supra note 48, 3.

¹²² Interview with Mitchell Maple, supra note 32, 10.

¹²³ *Ibid.*

¹²⁴ Unpublished John Wall letter, supra note 42, 1.

¹²⁵ Interview with Mitchell Maple, supra note 32, 9. Maple reported the number increased to \$2 per child, and even with these increases, he reported, “We were running out of money.”

¹²⁶ Interview with Olivia Ottoman, supra note 50, 11.

¹²⁷ Interview with Mitchell Maple, supra note 32, 9. Maple estimated the plaintiff school districts collectively spent \$2.3 dollars on copies, depositions, and accommodations for the witnesses, etc.

¹²⁸ Interview with Rhonda Rocker, supra note 64, 4.

¹²⁹ Interview with Mandy Mirror, supra note 82, 3.

¹³⁰ Interview with Tiffany Table, supra note 56, 6.

¹³¹ Interview with Charlie Chair, supra note 74, 3.

¹³² Interview with Julie Juniper, supra note 54, 5.

¹³³ Interview with Ruby Red, supra note 11, 13-14.

¹³⁴ Interview with Penny Purple, supra note 28, 8.

¹³⁵ Interview with Tiffany Table, supra note 56, 6.

¹³⁶ Interview with Peter Pine, supra note 33, 8.

¹³⁷ Interview with Sally Spruce, supra note 60, 8.

¹³⁸ Interview with Mitchell Maple, supra note 32, 11.

¹³⁹ Interview with Olivia Ottoman, supra note 50, 6.

¹⁴⁰ Interview with Dr. Alan Aspen (pseudonym) on December 15, 2006, 4.

¹⁴¹ Richard G. Salmon, Chart 2.12: Local Revenues Per Pupil in Average Daily Membership for Plaintiff School Districts, Ranked by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴² Richard G. Salmon, Chart 2.13: State Revenues Per Pupil in Average Daily Membership for Plaintiff School Districts, Ranked by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴³ Richard G. Salmon, Chart 2.15: Local + State Revenues Per Pupil in Average Daily Membership for Plaintiff School Districts, Ranked by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴⁴ Richard G. Salmon, Chart 4.4: Local Levy (Current Operations) for Plaintiff School Districts, Ranked and Arrayed by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴⁵ Richard G. Salmon, Chart 4.5: Local Levy (Debt Service) for Plaintiff School Districts, Ranked and Arrayed by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴⁶ Richard G. Salmon, Chart 4.4: Local Levy (Current Operations & debt Service) for Plaintiff School Districts, Ranked and Arrayed by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴⁷ Richard G. Salmon, Chart 5.18: Grade 3 PACT-Math % Proficient + % Advanced for Plaintiff School Districts, Ranked and Arrayed by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴⁸ Richard G. Salmon, Chart 5.18: Grade 4 PACT-Math % Proficient + % Advanced for Plaintiff School Districts, Ranked and Arrayed by Fiscal Capacity, FY 2001 (May 2003). Unpublished document on file with author.

¹⁴⁹ Interview with Penny Purple, *supra* note 28, 8.

¹⁵⁰ Interview with Mitchell Maple, *supra* note 32, 11.

¹⁵¹ Interview with Penny Purple, *supra* note 28, 8-9.

¹⁵² Interview with Peter Pine, *supra* note 33, 8.

¹⁵³ Interview with Mitchell Maple, *supra* note 32, 14.

¹⁵⁴ *Ibid.*, 14-15.

¹⁵⁵ Interview with Oscar Orange, *supra* note 38, 4.

¹⁵⁶ Interview with Alan Aspen, *supra* note 140, 5.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Richland County et al., v. Campbell et al.*, 294 S.C. 346.

¹⁵⁹ *Ibid.*, 348.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *South Carolina Constitution*, Article XI, §3.

¹⁶³ *Hildebrand, et al., v. High School District No. 32, et al.*, 138 S.C. 445.

¹⁶⁴ *Ibid.*, 449. The Supreme Court also cited *Moseley v. Welch*, 209 S.C. 19 by stating “framers of the constitution left the legislature free to choose the means of funding the schools of this state to meet modern needs.”

¹⁶⁵ *Richland*, *supra* note 158, 350.

¹⁶⁶ *Robinson v. Cahill*, 118 N.J. Super. 223.

¹⁶⁷ *Serrano v. Priest*, 5 Cal.3d 584.

¹⁶⁸ *Richland*, *supra* note 158, 350.

¹⁶⁹ *Abbeville County School District et al., v. the State, et al.*, (*Abbeville* 1999) 335 S.C. 58, 65.

¹⁷⁰ Interview with Mitchell Maple, *supra* note 32, 12.

¹⁷¹ *Abbeville* 2005, *supra* note 13, 4.

¹⁷² *Ibid.*

¹⁷³ Interview with Rory Rabbit, *supra* note 58, 2.

¹⁷⁴ The plaintiffs were refining their arguments in the early history of *Abbeville*. For example, the case was filed in 1993. By 1995 the plaintiffs had submitted their second amended complaint to the court. In other words, the case had elements of equity and adequacy in it.

¹⁷⁵ Interview with Penny Purple, *supra* note 28, 12.

¹⁷⁶ Interview with Rhonda Rocker, *supra* note 64, 1.

¹⁷⁷ *Ibid.*, 3.

¹⁷⁸ Interview with Bobby Blue, *supra* note 48, 4. The omitted part reads, “Justice Finney laid out, putting the minimally adequate issue aside; he carefully laid out the focus....” Many of those interviewed took issue with the minimally adequate standard, and that is what was meant by the “putting the minimally adequate issue aside” comment. This point will be discussed in greater detail later in this chapter.

¹⁷⁹ Interview with Ms. Wendy White (pseudonym) on November 28, 2006, 4.

¹⁸⁰ Interview with Bud Black, *supra* note 92, 13.

¹⁸¹ Interview with Tiffany Table, *supra* note 56, 9.

¹⁸² Interview with Mitchell Maple, *supra* note 32, 12.

¹⁸³ Interview with Bud Black, *supra* note 92, 7.

¹⁸⁴ Interview with Bobby Blue, *supra* note 48, 3.

¹⁸⁵ Interview with Derek Desk, *supra* note 46, 9.

¹⁸⁶ Interview with Alan Aspen, *supra* note 140, 1.

¹⁸⁷ *Ibid.*

¹⁸⁸ Interview with Ruby Red, *supra* note 11, 17.

¹⁸⁹ Interview with Mitchell Maple, *supra* note 32, 4.

¹⁹⁰ *Abbeville* (1999), *supra* note 169, 68.

¹⁹¹ Interview with Ruby Red, *supra* note 11, 17.

¹⁹² Interview with Mitchell Maple, *supra* note 32, 12.

¹⁹³ Interview with Ruby Red, *supra* note 11, 2.

¹⁹⁴ Interview with Mandy Mirror, *supra* note 82, 5.

¹⁹⁵ *Ibid.*, 4.

¹⁹⁶ Interview with Sally Spruce, *supra* note 60, 12.

¹⁹⁷ Interview with Peter Pine, *supra* note 33, 4.

¹⁹⁸ Interview with Mandy Mirror, *supra* note 82, 7.

¹⁹⁹ Interview with Tiffany Table, *supra* note 56, 6.

²⁰⁰ Interview with Mitchell Maple, *supra* note 32, 13.

²⁰¹ Interview with Ruby Red, *supra* note 11, 8-9.

²⁰² Interview with Julie Juniper, *supra* note 54, 2.

²⁰³ Interview with Rory Rabbit, *supra* note 58, 5.

²⁰⁴ Interview with Peter Pine, *supra* note 33, 5.

²⁰⁵ Tom Truitt, *The Law, Justice, and the Constitution: South Carolina's Unfulfilled Dream, Day Eight*, unpublished account of each day of the trial, available at:

http://www.scsba.org/030803_FundingTrial/

Last viewed January 11, 2007.

²⁰⁶ Interview with Alan Aspen, *supra* note 140, 2.

²⁰⁷ Interview with Sally Spruce, *supra* note 60, 6.

²⁰⁸ Interview with Charlie Chair, *supra* note 74, 9.

²⁰⁹ Interview with Mandy Mirror, *supra* note 82, 4.

²¹⁰ Interview with Olivia Ottoman, *supra* note 50, 14.

²¹¹ Interview with Ruby Red, *supra* note 11, 4.

²¹² Interview with Peter Pine, *supra* note 33, 5.

²¹³ Interview with Sally Spruce, *supra* note 60, 15.

²¹⁴ Interview with Ruby Red, *supra* note 11, 5.

²¹⁵ Interview with Sally Spruce, *supra* note 60, 13.

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- ²¹⁶ Interview with Peter Pine, *supra* note 33, 16.
- ²¹⁷ Interview with Julie Juniper, *supra* note 54, 2.
- ²¹⁸ Interview with Olivia Ottoman, *supra* note 50, 14.
- ²¹⁹ *Ibid.*, 3.
- ²²⁰ Interview with Rhonda Rocker, *supra* note 64, 8.
- ²²¹ Interview with Bud Black, *supra* note 92, 12.
- ²²² Interview with Julie Juniper, *supra* note 54, 5.
- ²²³ Interview with Mitchell Maple, *supra* note 32, 7.
- ²²⁴ John C. Drake, *Democrat Blasts Colleagues on Funding*, The State Newspaper, September 9, 2003, 1.
- ²²⁵ John C. Drake, *Both Sides Take Jabs Over Money*, The State Newspaper, September 11, 2003, 1.
- ²²⁶ John C. Drake, *Poor Facilities Hamper Schools*, The State Newspaper, September 25, 2003, 1.
- ²²⁷ Bill Robinson, *Hampton 2 Students Keep Falling Behind*, the State Newspaper, October 10, 2003, 1.
- ²²⁸ Interview with Oscar Orange, *supra* note 38, 3-4.
- ²²⁹ Interview with Bud Black, *supra* note 92, 3-4.
- ²³⁰ Interview with Peter Pine, *supra* note 33, 5.
- ²³¹ Interview with Rory Rabbit, *supra* note 58, 8.
- ²³² Interview with Derek Desk, *supra* note 46, 10.
- ²³³ Interview with Bud Black, *supra* note 92, 5.
- ²³⁴ *Ibid.*
- ²³⁵ Interview with Tiffany Table, *supra* note 56, 9.
- ²³⁶ Interview with Bud Black, *supra* note 92, 3.
- ²³⁷ Interview with Oscar Orange, *supra* note 38, 4.
- ²³⁸ Interview with Charlie Chair, *supra* note 74, 8-9.
- ²³⁹ Interview with Ruby Red, *supra* note 11, 17.
- ²⁴⁰ Interview with Bud Black, *supra* note 92, 9-10.
- ²⁴¹ Interview with Olivia Ottoman, *supra* note 50, 20.
- ²⁴² Interview with Penny Purple, *supra* note 28, 5.
- ²⁴³ Interview with Olivia Ottoman, *supra* note 50, 20.
- ²⁴⁴ Interview with Bud Black, *supra* note 92, 11-12.
- ²⁴⁵ The actual amount of this bond varies, depending on whom you talk to. The range of the bond was 750 million dollars to a billion dollars.
- ²⁴⁶ Interview with Olivia Ottoman, *supra* note 50, 19.
- ²⁴⁷ Interview with Alan Aspen, *supra* note 140, 2.
- ²⁴⁸ Interview with Julie Juniper, *supra* note 54, 5.
- ²⁴⁹ Interview with Wendy White, *supra* note 179, 5-6.
- ²⁵⁰ Interview with Penny Purple, *supra* note 28, 7.
- ²⁵¹ Interview with Bud Black, *supra* note 92, 13.
- ²⁵² Interview with Rhonda Rocker, *supra* note 64, 4-5.
- ²⁵³ South Carolina Constitution, article V, §3.
- ²⁵⁴ F. Andrew Hanssen, The Effect of Judicial Institutions on Uncertainty and the Rate of Litigation: The election Versus Appointment of State Judges, *Journal of Legal Studies*,

vol. XXVIII (January 1999), 206. Available at:

<http://www.journals.uchicago.edu/JLS/106.pdf>. Last viewed February 5, 2007.

²⁵⁵ William M. Landes & Richard A. Posner, The Independent Judiciary in an Interest-Group Perspective, 18 J. Law & Econ. 875 (*The Journal of Law and Economics*, 1975), 875.

²⁵⁶ Hanssen, *supra* note 254, 206.

²⁵⁷ *Ibid*, 211.

²⁵⁸ *Ibid*.

²⁵⁹ *Ibid*.

²⁶⁰ *Ibid*, 215.

²⁶¹ *Ibid*.

²⁶² Interview with Olivia Ottoman, *supra* note 50, 15.

²⁶³ Bill Robinson, School Funding Trial Bills Top \$12 Million, *The State Newspaper* (February 12, 2006), 1.

²⁶⁴ Interview with Charlie Chair, *supra* note 74, 7-8.

²⁶⁵ Interview with Rory Rabbit, *supra* note 58, 1.

²⁶⁶ Interview with Charlie Chair, *supra* note 74, 8.

²⁶⁷ Interview with Tiffany Table, *supra* note 56, 8.

²⁶⁸ *Ibid*, 10-11.

²⁶⁹ Interview with Penny Purple, *supra* note 28, 9.

²⁷⁰ Interview with Olivia Ottoman, *supra* note 50, 7-8.

²⁷¹ Interview with Tiffany Table, *supra* note 56, 7.

²⁷² Interview with Rory Rabbit, *supra* note 58, 8.

²⁷³ Interview with Bobby Blue, *supra* note 48, 3.

²⁷⁴ Interview with Derek Desk, *supra* note 46, 13.

²⁷⁵ Interview with Bud Black, *supra* note 92, 4-5.

²⁷⁶ *Ibid*, 9.

²⁷⁷ Interview with Derek Desk, *supra* note 46, 2.

²⁷⁸ Interview with Charlie Chair, *supra* note 74, 12.

²⁷⁹ Interview with Mandy Mirror, *supra* note 82, 1.

²⁸⁰ Interview with Olivia Ottoman, *supra* note 50, 5.

²⁸¹ Interview with Wendy White, *supra* note 179, 5.

²⁸² Interview with Tiffany Table, *supra* note 56, 3.

²⁸³ Interview with Penny Purple, *supra* note 28, 9.

²⁸⁴ Interview with Olivia Ottoman, *supra* note 50, 7.

²⁸⁵ Interview with Mitchell Maple, *supra* note 32, 19.

²⁸⁶ Interview with Rory Rabbit, *supra* note 58, 8.

²⁸⁷ Interview with Derek Desk, *supra* note 46, 6.

²⁸⁸ Interview with Ruby Red, *supra* note 11, 7.

²⁸⁹ Interview with Oscar Orange, *supra* note 38, 9.

²⁹⁰ Interview with Derek Desk, *supra* note 46, 7.

²⁹¹ Interview with Olivia Ottoman, *supra* note 50, 1.

²⁹² Interview with Mitchell Maple, *supra* note 32, 20.

²⁹³ Interview with Penny Purple, *supra* note 28, 10.

²⁹⁴ Interview with Julie Juniper, *supra* note 54, 2.

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- ²⁹⁵ Interview with Bud Black, *supra* note 92, 7.
- ²⁹⁶ *Ibid*, 9.
- ²⁹⁷ Interview with Olivia Ottoman, *supra* note 50, 8.
- ²⁹⁸ *Ibid*, 10.
- ²⁹⁹ Interview with Bud Black, *supra* note 92, 7.
- ³⁰⁰ Interview with Derek Desk, *supra* note 46, 2.
- ³⁰¹ Interview with Tiffany Table, *supra* note 56, 9-10.
- ³⁰² *Ibid*, 2.
- ³⁰³ Interview with Wendy White, *supra* note 179, 4.
- ³⁰⁴ Interview with Olivia Ottoman, *supra* note 50, 1.
- ³⁰⁵ Interview with Derek Desk, *supra* note 46, 4.
- ³⁰⁶ *Ibid*, 5.
- ³⁰⁷ Interview with Bud Black, *supra* note 92, 15.
- ³⁰⁸ This hypothetical student would have a greater chance of graduating from high school if he or she did not attend school in one of the plaintiff school districts.
- ³⁰⁹ Robinson, *supra* note 263, 1. Robinson reports that the South Carolina taxpayers have paid \$6.54 million of that bill. The plaintiff school districts have paid \$2.37 million. In addition, the plaintiffs' attorneys worked pro bono, and the estimate their unpaid expenses at \$6 million.
- ³¹⁰ 2006 School Report Card in South Carolina. Data obtained at: <http://ed.sc.gov/topics/researchandstats/schoolreportcard/2006/default.cfm>. Last viewed February 28, 2007.
- ³¹¹ Interview with Ruby Red, *supra* note 11, 15.
- ³¹² Lisa Bennett-Haigney, Faulkner Makes History at the Citadel, *National NOW Times* (August 1995), 1. Available at: <http://www.now.org/nnt/08-95/citadel.html>. Last viewed February 6, 2007.
- ³¹³ Beth Corbin & Allison Busch, Citadel Challenge Led by NOW Activist, *National NOW Times* (January 1995), 1. Available at: <http://www.now.org/nnt/01-95/citadel.html>.
- ³¹⁴ Bennett-Haigney, *supra* note 312, 1.
- ³¹⁵ Corbin & Busch, *supra* note 313, 1.
- ³¹⁶ *Ibid*.
- ³¹⁷ Borgna Brunner, South Carolina's Confederate Flag Comes Down (article posted online on June 30, 2000), 1. Available at: <http://www.infoplease.com/spot/confederate4.html>. Last viewed February 6, 2007.
- ³¹⁸ *Ibid*.
- ³¹⁹ Reference for the Corridor of Shame. The I-95 corridor is littered with poor, rural communities in South Carolina that comprised a majority of the plaintiff school districts in the *Abbeville* case.
- ³²⁰ *Abbeville* (2005), *supra* note 13, 1.
- ³²¹ *Ibid*, 162.
- ³²² *Ibid*, 159.
- ³²³ *Ibid*, 160.
- ³²⁴ *Ibid*, 161-162.

³²⁵ *Child Development Education Pilot Program (CDEPP): Timeline for Implementation*, unpublished document for Dillon 2 School District (2006), 1. Available upon request to Dillon 2 School District.

³²⁶ *SC Child Development Education Two-Year Pilot Program (Four-Year-Olds): 2006 – 07 and 2007 – 08*, unpublished document for Dillon 2 School District (2006). Available upon request to Dillon 2 School District.

³²⁷ *Ibid.* The eligibility requirements for Dillon 2 were the student’s family had to qualify for free or reduced lunch and had to be on Medicaid.

³²⁸ *Ibid.*

³²⁹ Interview with Alan Aspen, *supra* note 140, 4.

³³⁰ Interview with Olivia Ottoman, *supra* note 50, 14-15.

³³¹ Interview with Charlie Chair, *supra* note 74, 5.

³³² Interview with Bobby Blue, *supra* note 48, 2.

³³³ Interview with Bud Black, *supra* note 92, 11.

³³⁴ Interview with Ruby Red, *supra* note 11, 3-4.

³³⁵ Interview with Rory Rabbit, *supra* note 58, 9.

³³⁶ Interview with Peter Pine, *supra* note 33, 14.

³³⁷ Interview with Julie Juniper, *supra* note 54, 5. The other two interviewees to pose this same question were Representative Olivia Ottoman and Dr. Mitchell Maple.

³³⁸ Interview with Penny Purple, *supra* note 28, 5.

³³⁹ Interview with Rhonda Rocker, *supra* note 64, 2.

³⁴⁰ Interview with Mitchell Maple, *supra* note 32, 18.

³⁴¹ Interview with Rory Rabbit, *supra* note 58, 8.

³⁴² Interview with Mitchell Maple, *supra* note 32, 18.

³⁴³ Interview with Penny Purple, *supra* note 28, 10.

³⁴⁴ Interview with Wendy White, *supra* note 179, 4.

³⁴⁵ Interview with Derek Desk, *supra* note 46, 10.

³⁴⁶ Interview with Oscar Orange, *supra* note 38, 7.

³⁴⁷ Interview with Peter Pine, *supra* note 33, 11-12.

³⁴⁸ Interview with Oscar Orange, *supra* note 38, 8.

³⁴⁹ Interview with Olivia Ottoman, *supra* note 50, 2.

³⁵⁰ Interview with Rory Rabbit, *supra* note 58, 5.

³⁵¹ *Abbeville* (1999), *supra* note 169, 69.

³⁵² Interview with Rory Rabbit, *supra* note 58, 3.

³⁵³ *Ibid.*, 6.

³⁵⁴ *Ibid.*, 8.

³⁵⁵ *Ibid.*

³⁵⁶ Interview with Rhonda Rocker, *supra* note 64, 5.

³⁵⁷ *Ibid.*

³⁵⁸ Interview with Bobby Blue, *supra* note 48, 2.

³⁵⁹ Interview with Bud Black, *supra* note 92, 10.

³⁶⁰ Interview with Penny Purple, *supra* note 28, 5.

³⁶¹ Interview with Alan Aspen, *supra* note 140, 3.

³⁶² Interview with Rhonda Rocker, *supra* note 64, 7.

³⁶³ Interview with Derek Desk, *supra* note 46, 13.

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- ³⁶⁴ Interview with Ruby Red, *supra* note 11, 4.
³⁶⁵ *Ibid*, 5.
³⁶⁶ Interview with Peter Pine, *supra* note 33, 2-3.
³⁶⁷ Interview with Ruby Red, *supra* note 11, 15.
³⁶⁸ Interview with Derek Desk, *supra* note 46, 10.
³⁶⁹ Interview with Rory Rabbit, *supra* note 58, 3.
³⁷⁰ Interview with Derek Desk, *supra* note 46, 14.
³⁷¹ Interview with Mandy Mirror, *supra* note 82, 6.
³⁷² Interview with Charlie Chair, *supra* note 74, 5.
³⁷³ Interview with Peter Pine, *supra* note 33, 2.
³⁷⁴ Interview with Ruby Red, *supra* note 11, 5.
³⁷⁵ The state paid \$6 million for their legal representation. The plaintiffs' paid over \$2 million for legal expenses and the law firm estimated the *pro bono* work amounted to \$4 million.
³⁷⁶ Interview with Alan Aspen, *supra* note 140, 7.
³⁷⁷ *Ibid*.
³⁷⁸ Interview with Penny Purple, *supra* note 28, 4.
³⁷⁹ Interview with Derek Desk, *supra* note 46, 3.
³⁸⁰ Interview with Julie Juniper, *supra* note 54, 4-5.
³⁸¹ Interview with Bud Black, *supra* note 92, 10.
³⁸² Interview with Bobby Blue, *supra* note 48, 4.
³⁸³ *Ibid*, 2.
³⁸⁴ Interview with Peter Pine, *supra* note 33, 7.
³⁸⁵ Interview with Ruby Red, *supra* note 11, 16-18.
³⁸⁶ Interview with Charlie Chair, *supra* note 74, 9.

CHAPTER FIVE: CONCLUSION

Introduction

The objective of this chapter is to bring some degree of conclusion to this study on *Abbeville*. The conclusion to this study will be divided into six sections. The first section will be an overview of the study that reviews the purpose, methodology, and data analysis used to document the beginnings of *Abbeville*. The second section will present five conclusions drawn from the findings of this study. The third section will review the implications of this study. The fourth section will present the author's observations related to the study and the process. The fifth section will review five suggestions for future research. Finally, this chapter concludes with the author's final reactions.

Overview of the Study

In this section a review of purpose, methodology, and data analysis related to this study will be presented. A thorough review of the conclusions and implications of this study relies on a review of its intentions and achievements.

Purpose

Although the amount of research conducted on school finance cases is extensive, to say the least, *Abbeville* is one of the most recent school finance court cases to be adjudicated. And, as a result of its newness to the study of school finance litigation, *Abbeville* needs to be the subject of multiple scholarly examinations to determine its implications and significance. This study was needed in the field of school finance litigation since it begins the dialogue and examination of *Abbeville*.

The purpose of this study was to document the processes leading up to and affecting the *Abbeville* case. This study sought to examine the inception of the case by answering the following five research questions:

6. What political and economic conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit?
7. How were the eight lead school districts selected to be a part of the plaintiffs' case?
8. What legal arguments did both the plaintiffs and defendants use in *Abbeville*?
9. Why did the state choose to contest the lawsuit? And,
10. What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the case react to the decision?

Methodology

This study employed the case study conceptual framework as the guiding principle to best answer the five research questions. The case study approach to understanding an event or phenomenon is ideal when the focus of the study appears inseparable from other factors. *Abbeville* is an event that cannot be understood without an understanding of many other events, such as previous school finance cases in South Carolina, current legislation related to education, and the state constitution, to mention just a few.

The use of qualitative interviews proved ideal in procuring detailed answers to the five research questions. The open-ended questions allowed the participants the opportunity to discuss in-depth the various aspects of *Abbeville* and allowed for multiple follow-up questions. The findings and conclusions related to this study could not have

been achieved without the use of qualitative interviews. In an effort to increase the credibility and authenticity of the interview data each participant was assigned a pseudonym to protect his or her anonymity and provided the opportunity to review the interview transcript to ensure accuracy.

Data Analysis

The data from the interviews were meticulously scrutinized to produce the reported findings. This process included transcribing each interview and providing the participant the chance to review and correct the transcript. The interviews were coded related to the five research questions. These coded data were then chunked together to produce the various themes identified in Chapter Four related to each of the five research questions.

In addition, to support the findings that surfaced from the interviews, various primary documents were reviewed and reported where appropriate. These primary documents included current legislation related to education, various statistics related to education (student performance, demographics, teacher pay, etc.), newspaper reports on the actual trial, and the state constitution. The combination of these primary documents with the interview data produced the desired triangulation that resulted in an increased credibility.

Conclusion

The purpose of this study was to document the processes leading up to *Abbeville* by detailing the case's inception. This was achieved by answering the five research questions that guided the study. The five research questions were answered by combining the data from the eighteen qualitative interviews and various primary sources. These data

sources produced the desired triangulation that resulted in a higher degree of credibility for the study.

Conclusions

As a result of the findings section, there are six conclusions to this study that require greater discussion. These six conclusions are:

1. Mistakes in the *Abbeville* case: For a number of reasons decisions were made that, ultimately, hindered the plaintiffs' case. For example, it appears the eight lead school districts were not the best ones to present the complete argument before the court. Although the school districts were strong in one or two of the key points of the case, all eight were not strong in all of the points. As a result, the plaintiffs' case was less effective. Another example of mistakes associated with the case includes the number of witnesses and pieces of evidence submitted to the court. It appears like the judge was asked to consider too much. A more focused argument could have produced different results. Finally, the focus of the case appears to have changed over the course of the lawsuit. This proved problematic since people were not certain what the lawsuit was asking the court to consider. In addition, even after the state Supreme Court focused the lawsuit on minimally adequate, the plaintiffs' case did not completely adjust. It appears that these mistakes took a toll on the overall effectiveness of *Abbeville* and limited its influence on the financial climate in South Carolina.
2. Students in rural parts of South Carolina are in need of additional assistance: The data presented in this study clearly indicate that students in rural parts of South Carolina come to school ill prepared for school due to "generational poverty."¹

Issues surrounding generational poverty include illiteracy, poor nutrition, lack of intellectual stimulation in the home, lack of health care, inadequate transportation, and poor living conditions. As a result of these issues, children in school districts with high poverty concentrations are already behind their peers in other parts of the state before they begin school. However, the inequitable educational experiences do not end once students enter school. The education gap that exists prior to students enrolling in kindergarten only widens, or compounds, as students progress academically. As a result, these rural school districts have dismal scores on all academic indicators and unacceptably high dropout rate. Something must be done to reverse this trend in South Carolina.

3. Litigation concerns: If *Abbeville* is any indication, school finance court cases have significant costs, regardless of the measurement used. *Abbeville* was first filed in 1993 and, fourteen years later, it does not appear that the case is close to resolution because both sides have intimated at appealing the 2005 ruling. In addition, an estimated \$12 million have been spent on the lawsuit to date.² Also, it is estimated in this study that during the fourteen years that *Abbeville* has been litigated at least 3,850 students have dropped out of school from the plaintiff school districts. That is a significant expense in human capital when considering how many of these high school drop outs may have ended up in jail, on welfare, or in some other position in life that precludes them from being a contributing member of society. Finally, once a lawsuit is filed it become more difficult to enter into discussions to improve the situation because both sides become more distant from one another. Desk explained how the *Abbeville* lawsuit impacted

those at the state level, by stating, “you can bet that that [the early childhood program] is all that is going to be done [by the state for the plaintiffs].”³ The implication of this statement is that once the lawsuit was filed people at the state felt no more need to work with education leaders from the plaintiff school districts.

4. Minimally adequate in the constitutional standard: The state Supreme Court rendered a ruling in 1999 that kept *Abbeville* alive and provided the defendants, or the state, with seemingly the lowest possible constitutional standard to meet. Regardless of a person’s opinion on the ethical or moral components of the minimally adequate standard, the state Supreme Court did adhere to the state’s constitutional guidelines when it offered this definition of the education clause. In other words, legally, the minimally adequate standard is consistent with South Carolina’s Constitution. Since the standard is so low, it is difficult to imagine a situation where minimally adequate will help improve the situation for students in the rural school districts of South Carolina. In fact, considering the minimally adequate standard, it is surprising that the plaintiffs were able to receive the early childhood component out of Judge Cooper in the 2005 ruling. However, to expect the minimally adequate standard to do much more for public education in the rural settings, not to mention throughout the state, appears naive and misguided.
5. Conversation on moral obligation: Gatto talked about the need for a, “ferocious national debate that doesn’t quit, day after day, year after year, the kind of continuous debate that journalism finds boring”⁴ to genuinely improve education. Educational and political leaders in South Carolina need to change the focus of

the discussion related to the quality of education in the state from the constitutional obligation to one examining the moral implications of the current system. The discussion needs to focus on the skills all students in South Carolina need to compete in the 21st century. And, as Gatto said, the discussion must be continuous. The solutions to education are not going to be found in the courtroom or the front page of the newspaper. Rather, the solutions will be found as great minds come together for continuous dialogues on the moral obligation the state has related to education.

6. South Carolina has the talent pool to develop long lasting solutions to the issues raised in *Abbeville*: If the eighteen people who participated in this study are any indication of the talent within the state of South Carolina, then it seems apparent that education, legal, and political leaders have the skills necessary to solve the issues faced by rural school districts if they decide to do so. Those that participated in this study were quite impressive, thoughtful, and desirous to improve the current situation. It was an honor to listen to these people discuss the issues related to *Abbeville* and share their solutions.

Implications

There are three implications to this study that require deeper exploration and explanation. The first implication is that litigation should be the last option. Beyond the concerns associated with the time, cost-both money and human capital, and the uncertainty of the outcome, litigation offers limited opportunities for those seeking relief from the state's funding practices. For example, if Judge Cooper had ruled that the current educational system in South Carolina failed to measure up to the minimally

adequate standard in every aspect argued before the court, then it would have been a significant victory for the plaintiffs. However, it stands to reason that the defendants would have appealed. In addition, the General Assembly would work on developing a remedy to the judge's ruling. That remedy would eventually be challenged in the court system if the plaintiffs deemed it inadequate. The end result would be a victory for the plaintiffs that would be contested in courts for years to come.

Another possible outcome for the plaintiffs would look something like the 2005 ruling. The plaintiffs spent the fourteen years and millions of dollars arguing that the current educational system fails to meet the minimally adequate standard, and the judge only gave them the early childhood component of their case. That had to feel like a qualified victory for the plaintiffs that only produced limited results for the schools.

The third possible outcome for the plaintiffs is a ruling that completely sides with the defendants and the plaintiffs receive no relief from the courts. The legal history of South Carolina offers one example, *Richland v. Campbell*⁵, where the judge dismissed the case and the plaintiffs received nothing for their efforts. Of these three general results from a lawsuit, those suing the state do not stand to make significant gains with any of them. For that reason, the first implication of this study is that litigation should be employed only when all other avenues of resolution have been exhausted.

A second implication from this study is that South Carolina's education clause does not contain a quality standard strong enough to require the General Assembly to do more than what is minimally adequate. The fact is that the General Assembly is not constitutionally bound to do more than the bare minimum. And, based on the 2005 *Abbeville* ruling, that standard is very low according to Judge Cooper.

The final implication from this study is that there needs to be a discussion statewide concerning education. The discussion must be continuous and it must shift the focus to a different topic. Instead of debating what the General Assembly's constitutional obligation is related to public education, the focus must be on its moral obligation toward improving the learning opportunities for all students. This type of discussion will result in the desired outcomes for the plaintiff school districts, as well as the non-plaintiff school districts.

Observations

As I review the experience of conducting a thorough study on *Abbeville* I am struck by a few observations. First, I am not convinced that litigation was the best route for rural school districts in South Carolina. I recognize the fact that the General Assembly was virtually unresponsive to the plight of these school districts in the early 1990s, but I have the advantage of looking at the results of the efforts fourteen years after it was filed. I see a lot of time and resources dedicated to this effort and the end result, to date, is an early childhood pilot program for the next four years that, like other state mandates, is currently under funded. I wondered throughout this study if the threat of a lawsuit was more powerful in bringing about change than the actual lawsuit proved to be in South Carolina.

In addition, I was impressed with the intelligence and thoughtfulness of the eighteen people who participated in this study. Throughout this effort I thought that these people needed to talk to one another as opposed to me. I feel certain, based on the quality of people I worked with in this study, that South Carolina has the intellectual resources

necessary to improve the educational opportunities for all of its students. However, the continuous dialogue must first begin for the ideas to surface.

Finally, I was amazed at how accommodating people were to a graduate student from Virginia. I had two former governors, attorneys, educational leaders, and politicians who seemed to stop everything to talk with me about *Abbeville*. I was impressed with how willing people were to be helpful in this quest for greater understanding related to *Abbeville*.

Suggestions for Future Research

There are five suggestions for future research that stem from this study. Each will be presented as a question, followed by a brief discussion.

1. How effective is litigation in achieving the desired outcomes from the perspective of those contending the state is not funding education properly?

This point has been discussed already in this chapter. There have been significant resources, both time and money, tied up in litigation in general. Do the lawsuits produce the desired outcomes? It would appear that *Abbeville* produced two losers, the state and the school districts. Both put a lot of resources into the trial and neither received a sound return on the initial investment.

2. Who is the state? Does the state of South Carolina feel a moral obligation to improve education?

Realizing that the discussion related to education needs to move from constitutional obligation to a dialogue regarding the state's moral responsibility, it would be interesting to determine who is the state and if these people would be willing to enter into this type of discussion on the state's moral obligation. The new state Superintendent appears to be

pushing for the type of dialogue that is a prerequisite to lasting change and it will be interesting to see the support or resistance he faces over the next four years.

3. What impact will the 2005 ruling eventually have on public education in South Carolina?

At some point the plaintiffs in *Abbeville* will be able to go back to the courtroom and argue that the early childhood intervention did not close the achievement gap like Judge Cooper intended it to do, assuming it does not. The future argument is that the General Assembly needs to do more to help the students in the rural, poor school districts in South Carolina. This study would examine the impact that the early childhood program had on closing the achievement gap and if other indicators improved as a result of the early childhood efforts. If not, the plaintiffs would be armed with more data to say that the remedy offered by Judge Cooper did not go far enough.

4. How have the plaintiffs' and defendants' legal arguments changed over the life of *Abbeville* if the 2005 ruling is appealed?

Assuming *Abbeville* is appealed to the state Supreme Court, it would be interesting to look at the evolution and refinement associated with the arguments used by both legal teams. The case morphed from a \$8 million solution to one that requires \$1 billion to solve. With this growth in the scope of the case came a refinement of the legal arguments used to convince the courts. As this case inevitably heads back to the state Supreme Court it would be interesting to assess the changes in the arguments used throughout the life of the lawsuit.

5. Does the election process of judges impact rulings against the state? How many judges have not been reelected by South Carolina's General Assembly? Why?

There were many participants in this study who argued that the judge election process impacted the 2005 ruling. A study on the election process could affirm or refute this assumption. This would be of interest since South Carolina is the only state to allow its General Assembly exclusive authority related to a judge's election.

Final Reactions

I am a better person for having completed this study. I gained a greater appreciation for qualitative research as a result of this study. I obtained data that would not have been obtainable any other way. In addition, the data collected provide a wealth of understanding and insight into *Abbeville*.

Finally, I am hopeful that people on both sides of this issue in South Carolina will agree to come together and talk about the issues. There appears to be a significant problem in rural areas of South Carolina and the need for a solution is great. I hope people will forget about the courtroom and think about the individuals who can benefit from much needed assistance.

The purpose of this study was to document the processes related to the inception of *Abbeville*. This was achieved through the collection of data from eighteen interviews. These data, coupled with various primary documents, provided detailed answers to the five research questions that guided this study. This study will add to the study of school finance litigation and hopefully encourage people throughout the state to look for ways to improve the educational opportunities of all students in South Carolina.

Endnotes

¹ Interview with Dr. Sally Spruce (pseudonym) on December 7, 2006, 15.

² Bill Robinson, School Funding Trial Bill Tops \$12 Million, *The State Newspaper* (February 12, 2006), 1.

³ Interview with Mr. Derek Desk (pseudonym) on December 14, 2006, 7.

⁴ John T. Gatto, *Dumbing Us Down: The Hidden Curriculum of Compulsory Schooling* (Philadelphia, PA: New Society Publishers, 1992), 32.

⁵ *Richland County et al., v. Campbell et al.*, 294 S.C. 346..

Appendix A: The Research Design

The research design for this study is broken up into five components and follows the guidelines established by Yin. The five components are: “(1) a study’s questions; (2) its propositions, if any; (3) its unit(s) of analysis; (4) the logic linking the data to the propositions; and (5) the criteria for interpreting the findings.”

1. The research questions for this study are:

1. What conditions were present in South Carolina in the early 1990s that led to the decision to file the lawsuit?
2. How were the eight lead school districts selected to be a part of the plaintiffs’ case?
3. What arguments did the legal teams representing both sides of the case apply the legal arguments that were implemented in *Abbeville*?
4. Why did the state choose to contest the lawsuit? And,
5. What was the 2005 ruling in the *Abbeville* case and how did people closely associated with the case react to the decision?

2. The proposition that guides this study is the following:

The ruling in the *Abbeville v. the State* (2005) case is not a phenomenon that stands on its own. Rather, this event shares a connection with other events within South Carolina. These other events include the evolution of the state’s constitution, the legislation related to public (K-12) education at the time the suit was filed, and previous court cases addressing school finance issues. The study of these events, in conjunction with the data collected from semi-structured qualitative interviews of the significant

participants will result in a greater understanding of the inception of the case and what transpired.

3. The unit of analysis for this study is the *Abbeville v. State* court case in South Carolina.

4. The table below demonstrates how each data source relates to the proposition:

Data Source	Relationship of Data Source to Proposition	Criteria for Interpreting the Data Source
South Carolina's Constitution	Realizing that the entire case in question deals with the effectiveness of South Carolina's legislature's funding formula for public education, it becomes apparent that a detailed examination of the evolution of South Carolina's Constitution and its education clause will offer valuable insight to the history leading up to <i>Abbeville</i> .	<ol style="list-style-type: none"> 1. Historical review of the various constitutions of South Carolina to document changes over the years to the education clause. 2. Summary of findings. 3. External peer review related to data and findings.
Legislation in South Carolina related to public education (K-12) at the time the suit was filed	The ruling in <i>Abbeville</i> took into consideration the current legislation related to public education and, as a result, a more detailed examination of these laws is necessary to gain a stronger understanding of the ruling in the case.	<ol style="list-style-type: none"> 1. Historical review of the current legislation in South Carolina related to public education (K-12). 2. Summary of findings. 3. External peer review related to data and findings.
Previous court cases dealing with school finance issues	The legal system in the United States is based upon legal precedence. As a result, an examination of the previous court cases in South Carolina related to school finance issues will help illuminate the <i>Abbeville</i> ruling.	<ol style="list-style-type: none"> 1. Historical review of the previous court cases in South Carolina related to school finance issues. 2. Summary of findings. 3. External peer review related to data and findings.
Interviews of significant participants in the <i>Abbeville</i> court case	All of the historical data sources help explain how the circuit court reached its conclusion. However, to assess the impact the case had on South Carolina requires interviewing the significant participants.	<ol style="list-style-type: none"> 1. Develop an interview protocol. 2. Transcribe interviews. 3. Member-check each interview. 4. Surface analysis of all the interviews. 5. Coding of the interviews. 6. Chunking data into themes. 7. External peer review of findings.
Data on school	The data on school district academic	<ol style="list-style-type: none"> 1. Analysis of existing data on

districts in South Carolina at the time the suit was filed	performance will help explain the justification for the case and the selection process for the eight lead school districts.	school districts in South Carolina 2. Summary of findings 3. External peer review related to data and findings.
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5. The criteria for interpreting the data are detailed in the table above.

Appendix B: The Pee Dee Letter

The following is the letter sent to all the school districts in the state of South Carolina inviting them to join with the seventeen Pee Dee school districts in suing the state.

“October 19, 1993

<Field:1>

Dear <Field:2>

As many of you are aware, for the past four or five years many of the poorer school districts have appealed to the General Assembly to distribute more funds (e.g. fringe benefits) on the EFA formula. Even after taxing themselves at higher rates than wealthier districts, our local districts have less to spend per pupil. While the Legislature did begin to phase in EFA funding of fringe benefits, this effort has now stalled and is likely to face increased opposition in the next session. **We are now convinced (even some legislators acknowledge) that the General Assembly will not significantly change the state funding system without a judicial order.**

We intend to file a suit for an equitable funding system on behalf of interested school districts by **October 15, 1993**. We already have at least one district to serve as the primary plaintiff. We have retained the law firm of Turner, Padgett, Graham & Laney.

We would welcome any other districts to join as plaintiffs in the suit and/or to support the suit financially. If most districts who would benefit from the suit will contribute, we estimate the cost to you would be \$1,000 plus \$.50 per student (based on the 135 day ADM for FY93). Any funds left over would be returned to you in the same proportion.

We believe the more districts that support this effort the stronger the case will be. If you would be willing to join as a plaintiff, please have your school board endorse a resolution of support. A sample resolution is enclosed. We need copies of your Board's action as soon as possible.

We also need your financial support whether or not you wish to participate in the court action. If you wish to help, please calculate your share based on the formula above and send it to: Equity Education Defense Fund, P. O. Box 829, Florence, SC 29503.

We regret having to take the time and money to pursue a judicial remedy. However, for our children's sake, we cannot do less.

If you have questions or recommendations, please call Frank Hart (423-2891), Bob Scott (669-3391), or me (484-5327).

Sincerely,

John E. Wall, Chairman
Board of Directors
Pee Dee Education Center

Enclosure

JEW/vlw

Resolution

Whereas, it is the belief of our Superintendent that the shifting of employees' fringe benefits to local districts on a per pupil basis, rather than based on the ability to pay, has resulted in an unfair burden on the taxpayers of this school district, as one which has a low ability to pay, resulting in inequitable benefits to students within this District;

Wherefore, the Board authorizes this District to institute suit to remedy inequities in the State funding of education."

Appendix C: IRB Paperwork



Office of Research Compliance
 Institutional Review Board
 1880 Pratt Drive (0497)
 Blacksburg, Virginia 24061
 540/231-4991 Fax: 540/231-0959
 E-mail: moored@vt.edu
 www.irb.vt.edu

FWA00000572/ expires 7/20/07
 IRB # 16 IRB00000667.

DATE: October 12, 2006

MEMORANDUM

TO: Richard G. Salmon
 Spencer Weiler

FROM: David M. Moore 

Approval date: 10/11/2006
 Continuing Review Due Date: 9/26/2007
 Expiration Date: 10/10/2007

SUBJECT: **IRB Expedited Approval:** "Abbeville V. The State of South Carolina: A Case Study", IRB # 06-543

This memo is regarding the above-mentioned protocol. The proposed research is eligible for expedited review according to the specifications authorized by 45 CFR 46.110 and 21 CFR 56.110. As Chair of the Virginia Tech Institutional Review Board, I have granted approval to the study for a period of 12 months, effective October 11, 2006.

As an investigator of human subjects, your responsibilities include the following:

1. Report promptly proposed changes in previously approved human subject research activities to the IRB, including changes to your study forms, procedures and investigators, regardless of how minor. The proposed changes must not be initiated without IRB review and approval, except where necessary to eliminate apparent immediate hazards to the subjects.
2. Report promptly to the IRB any injuries or other unanticipated or adverse events involving risks or harms to human research subjects or others.
3. Report promptly to the IRB of the study's closing (i.e., data collecting and data analysis complete at Virginia Tech). If the study is to continue past the expiration date (listed above), investigators must submit a request for continuing review prior to the continuing review due date (listed above). It is the researcher's responsibility to obtain re-approval from the IRB before the study's expiration date.
4. If re-approval is not obtained (unless the study has been reported to the IRB as closed) prior to the expiration date, all activities involving human subjects and data analysis must cease immediately, except where necessary to eliminate apparent immediate hazards to the subjects.

Important:

If you are conducting **federally funded non-exempt research**, this approval letter must state that the IRB has compared the OSP grant application and IRB application and found the documents to be consistent. Otherwise, this approval letter is invalid for OSP to release funds. Visit our website at <http://www.irb.vt.edu/pages/newstudy.htm#OSP> for further information.

cc: File

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